

1 of Donkey Kong.

2 Q Is it your understanding that that permits you to prevent  
3 others from building those games?

4 A Building which games?

5 Q Donkey Kong games or whatever games you've got covered by  
6 copyrights.

7 A Yes.

8 Q Does it also permit you to stop people from operating --

9 A Yes, I do.

10 Q -- Donkey Kong games other than those manufactured by you  
11 or your distributor?

12 A Distributor don't manufacture.

13 Q Well, manufactured by you and sold by you or your  
14 distributor.

15 A Would you repeat that again?

16 Q Is it your understanding that the copyright also permits  
17 you to prevent others from actually using a Donkey Kong  
18 game that is manufactured by somebody other than you?

19 MR. SERRITELLA: Mr. Gifford, I think the  
20 problem with the word use is its ambiguity. If you're  
21 driving at the question of whether it permits people to  
22 play the game, I think the witness may understand what  
23 you're asking. If you're asking something else as far as --

24 MR. GIFFORD: Play the game is fine. I'll  
25 substitute that. By use I intend it to mean operate

1 rather than playing. Operating to me means that which the  
2 operators do, those people who put them in places where  
3 kids come in and use them.

4 BY MR. GIFFORD:

5 Q Does the copyright give you the right to prevent operators  
6 from using games other than those manufactured by you?

7 A I think so.

8 Q And the only way that Nintendo of America, Inc. will  
9 permit people to operate under their copyright is if they  
10 buy a game manufactured by Nintendo of America, Inc.; is  
11 that correct?

12 A Manufactured by Nintendo of America, Inc. or Nintendo  
13 Company, Limited.

14 Q It has to be one or the other?

15 A Yes.

16 Q Are you aware that the stickers or seals that Nintendo  
17 Company, Limited provided to Falcon under its agreement  
18 with Falcon were printed in English?

19 A I saw the sticker.

20 Q Were they printed in English?

21 A Yes.

22 Q Do you recall what they said?

23 A I don't remember exactly.

24 Q Did they carry a copyright notice?

25 A I don't remember.

1 Q Do you have any of those stickers in your possession?

2 A No.

3 Q Could you get some of those stickers from Nintendo  
4 Company, Limited?

5 A I think so.

6 Q Do you recall any language on the stickers which said that  
7 the boards are not to be sold in the U.S.?

8 A I don't remember.

9 Q Has Falcon sold anywhere -- sold its board anywhere but in  
0 Japan and in the U.S. to your knowledge?

1 A I don't.

2 Q Have they sold in Canada?

3 A I don't know.

4 (Exhibit 1 was marked for identification.)

5 BY MR. GIFFORD:

6 Q Let me show you what's been marked as Arakawa Deposition  
7 Exhibit 1, which is an Affidavit of Michael Dodson  
8 provided by Plaintiffs with its Motion for Preliminary  
9 Injunction.

10 A while ago I was asking you some questions about  
11 Michael Dodson, this is the Michael Dodson who I was  
12 talking about. Do you know Mr. Dodson?

13 A Not personally.

14 Q Have you ever met him?

15 A No.

1 Q Have you ever talked to him?

2 A No.

3 Q Have you ever corresponded with him?

4 A No.

5 (Exhibit 2 was marked for identification.)

6 Q Okay. Let me show you what's been marked as Arakawa  
7 Deposition Exhibit 2. Earlier in your testimony you  
8 indicated you had seen a letter that you thought came from  
9 Falcon indicating something about the license agreement.  
10 Was that the type of letter that you saw?

11 A The ones I saw I believe is a little different from this.

12 Q Do you know Mr. Inoue? Is that how you pronounce it?

13 I-n-o-u-e.

14 A Inoue.

15 Q Inoue?

16 A Yes. I don't know him.

17 Q Have you ever met him?

18 A No.

19 Q Ever talked to him?

20 A No.

21 Q You were Noticed -- you have appeared here as in response  
22 to a Notice served upon Nintendo of America, Inc. as the  
23 person most likely to know the answers to questions  
24 concerning the following topics, and I want to go through  
25 them to make sure you're the right person for this

1 deposition.

2 Are you the person at Nintendo of America, Inc. that  
3 knows the most about the authorship of the audio and  
4 visual display of the Donkey Kong arcade game?

5 A I know, but I don't know whether I am -- I know the best  
6 or not.

7 Q Is there anyone at Nintendo of America, Inc. that formerly  
8 worked for Nintendo Company, Limited?

9 A Yes. There are two persons.

0 Q What are their names?

1 A Ota and Ishizuka. O-t-a and I-s-h-i-z-u-k-a.

2 Q What's their first names?

3 A Shigeru; S-h-i-g-e-r-u. Ota.

4 Q And how about the other one?

5 A I don't remember. It starts with an initial M.

6 Q What do they do at -- what did Mr. Ota do at Nintendo of  
7 America?

8 A He's the Accounting Manager.

9 Q And what did he do at Nintendo Company, Limited?

0 A I don't know.

1 Q How about Mr. Ishizuka?

2 A He does parts inventory and parts orders.

3 Q And what did he do at Nintendo Company, Limited?

4 A I believe he worked for the plant of Nintendo Company,  
5 Limited.

1 Q Do you have any engineers or computer people on the  
2 payroll at Nintendo of America?

3 A We have technicians.

4 Q Any of those from Nintendo Company, Limited?

5 A No.

6 Q Are you the person at Nintendo of America that would know  
7 the most about the first publication of the Donkey Kong  
8 arcade game, including the location and date?

9 A Yes.

0 Q Are you the person at Nintendo who would know the most  
1 about the people who participated in the creation of the  
2 Donkey Kong arcade game?

3 A Yes.

4 Q And you're the person who knows the most about licensing  
5 agreements entered into by Nintendo of America relating to  
6 the Donkey Kong game?

7 A Yes.

8 Q The design and development of the electronic equipment  
9 which creates the audio-visual display of Donkey Kong, are  
10 you the person at Nintendo of America that would know the  
11 most about that?

12 A Yes.

13 Q And the authorship of the computer program?

14 A Yes.

15 Q The negotiations between Plaintiff, which is Nintendo of

1 America, and Nintendo Company, Limited which resulted in  
2 the assignments we talked about previously --

3 A Yes.

4 Q -- you would know the most about any agreements between  
5 Plaintiff and Nintendo Company, Limited relating to  
6 electronic arcade games?

7 A I beg your pardon?

8 Q Are you the person at Nintendo of America, Inc. that would  
9 know the most about any agreements between Nintendo of  
0 America and Nintendo Company, Limited pertaining to arcade  
1 games?

2 A Yes.

3 Q And are you the person at Nintendo of America that would  
4 know the most about any and all modifications to the  
5 Donkey Kong computer program, if any, made by Plaintiff?

6 A Yes.

7 Q Are you the person at your company that would know the  
8 most about the lawsuits brought by Plaintiff for  
9 infringement of the copyright registration?

20 A Yes.

21 Q Are you the person that would know the most at your  
22 company about the Plaintiff and Falcon Company, Limited in  
23 negotiations, if any, between those companies pertaining  
24 to the Donkey Kong arcade game?

25 A Between who?

Q Between you, yourself, and Falcon Company, Limited.

I understand from your testimony there were none, so I guess you're the one that knows the most about that; is that correct?

A Yes.

Q If there were some, you would be involved in them?

A Yes.

Q It's my understanding from the response to our request for documents that there's been no comparison made by Nintendo of America, Inc. between the computer programs for the Donkey Kong game and the logic boards that were sold by Defendant Elcon, is that correct?

A That's correct.

Q And you would be the one that would know the most about that at Nintendo of America, Inc.?

A Yes.

Q If such comparisons would have been made you would have known about it, is that correct?

A Um-hmm.

Q Have you brought any documents with you today in response to the request for documents that accompany this Notice?

A Yes.

MR. GIFFORD: Can we see what you've brought at this time?

MR. DONOHUE: Yes.



1 MR. GIFFORD: Why don't we take a bit of a  
2 break. I'm about finished.

3 (Luncheon recess taken.)

4 MR. GIFFORD: The only thing I want to do yet is  
5 go over the document request and make sure what we've got  
6 and what we're entitled to, and then Doug has a few  
7 questions and we'll be finished from our side at least.

8 BY MR. GIFFORD:

9 Q Just prior to the break some documents were provided to me  
0 by your counsel.

1 MR. GIFFORD: And I assume those are the  
2 documents that are being provided pursuant to the request  
3 that accompanied the Notice of deposition?

4 MR. DONOHUE: That's correct.

5 MR. GIFFORD: I've made copies of those so we  
6 have an extra copy.

7 MR. DONOHUE: I should make two statements on  
8 the record with regard to that, counsel. There are two  
9 things that we didn't find in our response to your request  
10 for production that are not there.

11 One is -- well, the identity of certain telexes, and  
12 I don't recall which paragraph those telexes were dealt  
13 with. The date of first publication in Japan, I believe,  
14 was the reason they were identified they might relate in  
15 terms of the ordering of the games from Nintendo or from

1 Nintendo Company, Limited. We then found upon review of  
2 the telex they didn't relate to that issue, the telexes  
3 were simply game orders. And so there are no telexes.

4 The other thing is I have identified, I think, in  
5 that request for production either an affidavit or a  
6 declaration of Mr. Yamauchi relative to one of the  
7 responses, I think. Is that correct?

8 MR. GIFFORD: I don't know where you're reading  
9 from. This may be in your own.

0 MR. DONOHUE: In our response.

1 MR. GIFFORD: Personal notes or something. But  
2 I don't have any references to any of those things in the  
3 response that I received.

4 Oh, here it is. Okay. I've got it. Response two,  
5 is that what you're talking about?

6 MR. DONOHUE: Yes. When I said Mr. Yamauchi, I  
7 was referring to response under paragraph roman two.

8 I simply neglected those. I've given instructions  
9 to my office to have them Federal Expressed to counsel, so  
10 you should have them tomorrow.

11 MR. GIFFORD: Okay.

12 MR. DONOHUE: But those -- obviously, those  
13 affidavits and/or declaration, whatever it is, was not  
14 prepared by this witness. So, I don't think there'll be  
15 any problem in that regard.

1 MR. GIFFORD: And the telexes we're talking  
2 about are paragraph three, numeral three.

3 MR. DONOHUE: That's correct.

4 I would also note that of the documents that have  
5 been prepared, the second document you have in there is  
6 called Nintendo licensees, that was prepared by our office  
7 rather than Mr. Arakawa's office.

8 MR. GIFFORD: Let's get some of these marked.  
9 You don't have any objection to me stapling this together,  
0 do you?

1 MR. DONOHUE: No.

2 MR. GIFFORD: Why don't you mark that as Arakawa  
3 Deposition Exhibit 3.

4 (Exhibit 3 was marked for identification.)

5 BY MR. GIFFORD:

6 Q Okay. Mr. Arakawa, I show you what's been marked as  
7 Arakawa Deposition Exhibit 3. Does that look like a list  
8 of the licensees of the Donkey Kong in the U.S.?

9 A Yes.

10 Q And I take it from your previous testimony that none of  
11 these are licensed for manufacture of video games?

12 A No.

13 Q These are licensees to use the trademark Donkey Kong on  
14 other than video games?

15 A Yes.

MR. DONOHUE: Can I see that again?

A I mean arcade game.

Q Yes. That's what I mean.

Q Coleco is licensed to make a toy?

A Home video, too.

Q It's a home video?

A And toys.

Q With respect to people like Coleco, do you require them to indicate that they are operating under a license from Nintendo of America, Inc.?

A Yes.

Q Have you or anybody from Nintendo of America, Inc. been to the Coleco manufacturing facilities?

A No.

Q Do you exercise any control over the quality of the products that are produced by Coleco?

A Yes.

Q How do you exercise that control?

A We have approve the design, we approve the sample.

Q They send you a sample and then you look at it and approve it?

A Yes.

Q Have you approved Coleco's sample?

A I don't know whether we have approved it or not.

Q Do you personally participate in that approval?

1 A No.

2 Q Who does?

3 A Our Licensing Manager.

4 Q And who is that?

5 A Susan Schonecker.

6 Q How do you spell her name?

7 A S-u-s-a-n. S-c-h-o- I think it's n-e-c-k-e-r.

8 Q And her title is Licensing Manager?

9 A Correct.

0 Q Does she approve the products of all of the Nintendo  
1 licensees?

2 A Yes.

3 Q That's her job?

4 A Yes.

5 MR. GIFFORD: Mark this as Exhibit 4.

6 MR. DONOHUE: Off the record.

7 (Brief discussion held off the record.)

8 (Exhibit 4 was marked for identification.)

9 BY MR. GIFFORD:

0 Q I show you what's been marked as Arakawa Exhibit 4, which  
1 is one of the documents provided to me pursuant to the  
2 Notice. Would you look at the last page, please. Is that  
3 your signature?

4 A Yes.

5 Q Would you look at the dates that are set forth in

1 paragraph one and also in paragraph two. You testified  
2 earlier that you became aware of the Crazy Kong games in  
3 the U.S. in the Fall of '81?

4 A Yes.

5 Q Are these dates the correct dates?

6 A Yes.

7 Q So that sometime prior to September of '81 you received  
8 information as set forth in paragraph two?

9 A Yes.

0 Q I take it that paragraph four is a mistake. The date  
1 that's set forth there, prior to December of '78, should  
2 that be '81?

3 A Um-hmm.

4 Q Is that a yes?

5 A '81.

6 MR. DONOHUE: Counsel, I would just like to --  
7 so the record isn't unclear on Exhibit 4, I don't want to  
8 mislead you. On the -- when you asked him about the  
9 September '81 date, that action did not involve Crazy  
0 Kong. If you'd like to explore it more with him, you may,  
1 but --

2 MR. GIFFORD: Well, let's explore it then.

3 BY MR. GIFFORD:

4 Q What did it involve? The paragraph two says that prior to  
5 September 1981, applicant received information through its

employees that a video game operator doing business as Fantasy Amusements, Inc. of Renton, Washington, was making infringing audio-visual games bearing the Donkey Kong trademark. Were these Crazy Kong games?

A No.

Q What were they?

A It's Donkey Kong.

Q Were they actually Donkey Kong games?

A Yes.

Q How did the Fantasy Amusements acquire Donkey Kong games?

A They purchased originally a former game called Radar Scope and converted them to Donkey Kong.

Q Where did they get the boards?

A They used Radar Scope boards.

Q Used the same boards.

Where did they get the ROMS?

A I think they copy our Donkey Kong game --

Q Okay.

A -- ROMS.

Q Is that the same -- is that true with respect to Donkey Kong ROMS? The reference in paragraph one, on October 20th, 1981, is that the same kind of situation?

A No, these are Crazy Kongs.

Q Is that the first date then in which you became aware that Crazy Kongs were being sold in the U.S.; on or about that

date?

A Yes.

Q So when you referred in your previous testimony to having acquired knowledge in the Fall of '81, you were referring to this instance?

A Yes.

Q That here says on or about October 20th, 1981.

A (Nodding affirmatively.)

(Exhibit 5 was marked for identification.)

BY MR. GIFFORD:

Q Let me show you what's been marked as Arakawa Exhibit 5. Do you recognize that? It purports to be an application for a registration of a copyright in Canada.

Is that your signature at the bottom?

A Yes.

Q Who is Gunpei Yokoi?

A Mr. Yokoi is the member of R & D in Nintendo Company, Limited.

Q And this indicates that he's the author of Donkey Kong?

A He's the Manager of that R & D.

Q Do you see where it says here insert full name and full address of author?

A Because he's responsible for all of the activities of our R & D.

Q Do you know what author, that word means?



1 A Yes, I know.

2 Q Is he the author of the game according to this?

3 A The Department is the author.

4 Q How come you didn't put the Department in there, rather  
5 than his name?

6 MR. DONOHUE: That calls for a legal conclusion,  
7 counsel. What took place in this case was Nintendo  
8 Company, Limited was put down, then under Canadian  
9 copyright law they wanted to know the Head of the  
0 Department or an individual as opposed to the company  
1 name, and that's why it was that way.

2 BY MR. GIFFORD:

3 Q Where did you get the information to put Mr. Yokoi's name  
4 in there?

5 A I know he's the Manager of R & D.

6 Q You knew that?

7 A Yes.

8 Q Without asking?

9 A Right.

10 Q How did you know that the work was first published on the  
11 9th day of July 1981 in Tokyo, Japan?

12 A I think we asked Japan when it was, and we received this  
13 July 9th from Japan.

14 MR. GIFFORD: Let me have this marked as Exhibit  
15 6.

(Exhibit 6 was marked for identification.)

BY MR. GIFFORD:

Q I show you what's been marked as Exhibit 6. This appears to be a copyright assignment from Nintendo Company, Limited to Nintendo of America, Inc..

A Yes.

Q It's dated March 15th, 1982, is that correct?

A Yes.

Q When was Nintendo of America, Inc. formed?

A It was 1980.

Q And when did it begin producing -- or began selling Donkey Kong games?

A August 1981.

Q Can you tell me why the copyright assignment was not executed until March 15th, 1982?

MR. DONOHUE: Let me put an objection on it. First of all, that's a confirmation of a copyright assignment, that's not the copyright assignment itself. The copyright assignment itself is attached to his moving papers. Subject to that objection, if you want to answer you may.

A I think this is the division of the -- or confirmation of the copyright assignment, which we did before.

Q What was the purpose of preparing a confirmation?

A I don't remember very well, but it was something to do

with the date of first publication or there was some divisions.

Q Was the original assignment in Japanese?

A It's in English.

Q The original copyright assignment?

A Yes.

MR. GIFFORD: Do we have that?

Off the record.

(Brief discussion held off the record.)

MR. GIFFORD: Back on the record.

BY MR. GIFFORD:

Q The original assignment appears to have a publication date of July 27th, is it, 1981. Can you tell me how that -- is that a mistake?

A Yes.

Q Should it have been July 9th?

A Um-hmm.

Q How did that mistake occur, do you know?

A I don't remember very well.

Q How did you discover it, that it was a mistake?

A This is not for sure, so -- but I think when we first registered, applied for the copyright, I think I took the date from one of the collection report of Donkey Kong in Japan.

Q And it turned out that they had published earlier than

1 that?

2 A Right.

3 Q I'm not going to mark this as an Exhibit, but there's a  
4 letter from your attorneys to the Copyright Office with a  
5 copy to you, a copy to Larry Jackson, and a copy to  
6 Nippon, Gijutsu, Boeki, Limited. Who is Nippon, Gijutsu,  
7 Boeki, Limited?

8 A I think it's the lawyer of Nintendo Company, Limited.

9 Q It's not a lawyer's name, is it?

0 A I don't know very well.

1 Q Do you think it's a Japanese lawyer?

2 A Yes, I think so.

3 Q Other than that, you don't know who they are?

4 A Pardon?

5 Q You don't know other than that? You don't know where they --

6 A No.

7 Q You never had any dealings with them?

8 A No.

9 (Exhibit 7 was marked for identification.)

10 BY MR. GIFFORD:

11 Q I'm showing you what's been marked as Exhibit 7, can you  
12 identify that?

13 A Yes.

14 Q What is that?

15 A We purchased the design of the brochure of Donkey Kong

from Leslie Cabarga, and we applied for the copyright.

Q And that's the agreement that transfers that right?

A Yes.

Q Okay. With respect to the documents that we requested, it's my understanding that you have no source listings, assembly listings, listings of the contents of the ROMS, anything of that kind of thing in your possession?

A We don't have it.

Q Can you get any of it, can you obtain any of it?

A I don't think so.

Q Have you tried?

A Yes.

Q These were the things you were telling before they refused to provide to you?

A Right.

MR. GIFFORD: How about documents pertaining to the authorship of the Donkey Kong arcade game? The response indicates that there's an affidavit and declaration of Mr. Yamauchi, and that's what you're going to provide to me. If I pronounced his name correctly.

And the copyright and trademark files, which I guess we have, although they don't appear to be complete to me -- do I have a copy -- entire copy of the copyright file and the trademark?

MR. DONOHUE: You have a copy of the entire

copyright file. I believe that you have -- when I say that, you have a copy of the client's copyright file. You have a copy of the file less privileged communications between attorney and client.

The trademark file, I believe you have everything with the exception of the initial filing for a trademark, the initial application. When I was reviewing this last night, I didn't see that.

MR. GIFFORD: I didn't see any responses from the Trademark Office either.

MR. DONOHUE: On what?

MR. GIFFORD: On anything. You filed a petition.

MR. DONOHUE: Yes. There are some responses in the document that I've supplied.

MR. GIFFORD: Did you see it? I didn't.

MR. SPRINKLE: I didn't see it.

MR. GIFFORD: In fact, I'm through with those, so you can have those back now.

I saw that. That's denying your petition for -- oh, it's granting the petition.

MR. DONOHUE: It's granting it.

MR. GIFFORD: But that's it?

MR. DONOHUE: To my knowledge, that is it.

MR. GIFFORD: Okay.

1 MR. DONOHUE: There was an initial letter, I  
2 recall seeing it, and I thought it was in the matters  
3 provided. There was an initial letter or an initial  
4 statement by the Trademark Office denying special  
5 authorization. Then an Exhibit was filed.

6 MR. GIFFORD: I have that. That was the  
7 Affidavit.

8 MR. DONOHUE: Yeah. Exhibit 4 was filed and  
9 then the Department's response was that a petition to make  
0 special was granted.

1 MR. GIFFORD: Okay. Paragraph six asks for all  
2 documents pertaining to the first publication of the  
3 Donkey Kong arcade game. And there you indicated that the  
4 only documents you have are the trademark and copyright  
5 files, which you've provided. And there's certain  
6 telexes, but you've explained those have nothing to do  
7 with it.

8 MR. DONOHUE: (Nodding affirmatively.)

9 MR. GIFFORD: There are no documents relating to  
10 this mix-up in publication date, is that correct?

11 MR. DONOHUE: Other than what you've talked  
12 about.

13 MR. GIFFORD: Yes. No correspondence going back  
14 and forth.

15 A I don't think so.

1 MR. GIFFORD: Do we have all the documents  
2 relating to the assignment of the copyright from Nintendo  
3 Company, Limited to Nintendo of America? Were those all  
4 provided to us today, you have nothing other than that?

5 MR. DONOHUE: Yes.

6 That, plus I would add that the formal assignemtn  
7 itself was not in the copies provided, but the assignment  
8 has been attached to the moving papers.

9 MR. GIFFORD: There's no correspondence relating  
0 to that assignment?

1 MR. DONOHUE: Other than what has been provided,  
2 that's correct.

3 BY MR. GIFFORD:

4 Q Where was that assignment signed; where was this executed?  
5 Exhibit 6, for instance, where did the execution of that  
6 take place?

7 A Where was it?

8 Q Um-hmm.

9 A Japan.

10 Q How did it get to Japan?

11 A We mailed it and they signed it.

12 Q Is there no letter of explanation that went with it to  
13 tell them why it was necessary to re-sign something, to  
14 execute a confirmation assignment?

15 A I don't know whether there was a covering letter or not.



Q And the person who executed it on behalf of Nintendo Company, Limited, that's your father-in-law?

A Yes.

Q The President of the company?

A Yes.

MR. DONOHUE: There may have been some attorney correspondence sending that document to them, if so that would have been withheld.

MR. GIFFORD: Do you consider the correspondence between you and the Nintendo Company, Limited to be privileged correspondence?

MR. DONOHUE: No, I'm not saying that. I'm saying the attorneys for Nintendo Company, Limited may have. I do not know for a fact whether or not there was correspondence on this one, but what I'm suggesting to you is that if there was -- you have seen some correspondence from attorneys for Nintendo Company, Limited that has been provided, and that if such was in the file it would have been withheld.

MR. GIFFORD: Well, now I'm a bit confused. I understand what you're saying. You're saying that Nintendo Company, Limited has its own attorneys, but are you saying that you have withheld correspondence --

MR. DONOHUE: No.

MR. GIFFORD: -- originating from them?

1 MR. DONOHUE: No.

2 MR. GIFFORD: You're saying you don't know  
3 whether there was such correspondence.

4 MR. DONOHUE: That's correct.

5 BY MR. GIFFORD:

6 Q Was this confirmation of copyright assignment, Exhibit 6,  
7 was that sent by you to Nintendo Company, Limited, do you  
8 recall?

9 A By me personally, you mean?

0 Q Yes.

1 A I don't remember.

2 Q Okay. And with respect to request number nine and ten,  
3 all documents pertaining -- no, not nine but ten.

4 All agreements between Plaintiff and Nintendo  
5 Company, Limited and pertaining to the Donkey Kong arcade  
6 game, we have those? I take it you have provided the only  
7 agreements, which would be the assignments?

8 A Yes.

9 Q And number eleven, all licensing agreements entered into  
10 by Plaintiff and pertaining to the Donkey Kong arcade  
11 game?

12 A Oh, just a moment. When we order games to Japan they --  
13 we order by telex, and we receive a shipping schedule of  
14 the orders from Japan. I don't know whether you call it  
15 agreement or not.

1 Q No, I wouldn't call that an agreement. At least for the  
2 purposes of this we don't intend that.

3 Okay. Number eleven, we're all right.

4 You've objected to providing us with copies of  
5 licensing agreements between Nintendo of America,  
6 Incorporated, and those people listed in Exhibit, what, 3,  
7 is that correct? There are written license agreements  
8 between Nintendo of America, Inc. and these parties?

9 A Yes.

0 Q Is that correct?

1 And you're objecting to providing us with copies of  
2 those?

3 A (Nodding affirmatively.) Yes.

4 Q You've testified today that there are no agreements  
5 between Nintendo of America, Inc. and Falcon Company,  
6 Limited, is that correct?

7 A That's correct.

8 Q And so there would be no documents or agreements, written  
9 agreements with respect to that.

0 Fourteen, we're all right.

1 Fifteen, we asked for documents from each lawsuit  
2 brought by Plaintiff and alleging infringement of  
3 copyright registration such and such, which is the Donkey  
4 Kong registration. Your counsel has objected, indicating  
5 that there are eighteen such lawsuits and they cover

between eight and ten feet of shelf space.

Do you have files for each of these eighteen lawsuits?

A We put everything in one file.

Q You put everything in one file. How big is your file?

A I don't know.

Q How much shelf space does it cover?

A I don't know. I don't do the filing.

Q Does it cover eight to ten feet?

A I don't know.

Q Could you have brought it with you today?

A No.

Q Why?

MR. DONOHUE: Wait a minute. Counsel, I want to be heard on that one.

MR. GIFFORD: I'm asking him the question, not you.

MR. DONOHUE: First of all, you weren't present at Mr. Dubel's deposition when I advised your co-counsel of the length and the over-breadth, and the burdensomeness of this production. He advised me then at that deposition that he would get in and tailor that request; he hasn't. We will make those documents available to you, but your co-counsel said he would let us know specifically what he wanted.

MR. SPRINKLE: That's not true.

MR. GIFFORD: I think the request indicates what we want. Copy of each document filed, we want a copy of each deposition, and all other documents relating in any way to the lawsuit.

And it seems to me that Mr. Arakawa could have brought his file. Maybe yours are too big to bring, although for a company that ships arcade games all over the country it wouldn't be that difficult to ship eight to ten feet of files either.

MR. DONOHUE: Mr. Arakawa -- I will represent to you Mr. Arakawa does not have what you were seeking in that particular request. I think the response to the request makes it clear that the only place that those documents are kept are in our offices.

BY MR. GIFFORD:

Q Do you get documents regularly, copies of documents regularly?

A Which documents?

Q From your counsel.

A Which document?

Q Documents relating to lawsuits.

A I don't know whether we get all of them or not.

Q Do you get them on a regular basis?

A Regular basis?

1 MR. DONOHUE: How is he supposed to know?

2 MR. GIFFORD: Well, he can answer his own  
3 questions. If he doesn't know, then when I want to take  
4 your deposition we'll swear you in and take it.

5 MR. DONOHUE: You're asking him a question with  
6 no foundation to it.

7 MR. GIFFORD: Let him answer the question. If  
8 he can't, we'll go on. But I don't want your answers.  
9 You've already given me your answers, I'm looking for his  
0 now.

1 BY MR. GIFFORD:

2 Q Do you get documents regularly from your counsel relating  
3 to these lawsuits?

4 A I don't know whether it's regularly or not, but we  
5 receive.

6 Q Do you participate in these lawsuits?

7 A What do you mean by participate?

8 Q Do you sign affidavits, do you make decisions regarding  
9 them?

10 A I sign affidavits.

11 Q Do you make decisions regarding where to bring the  
12 lawsuits?

13 A Yes, we do.

14 Q Are you in control of the lawsuits for your company?

15 A Yes.

Q Do you have documents pertaining to these lawsuits?

A I don't know whether we have all of them or not.

Q You do have some?

A Yes.

Q Could you have brought them with you?

A I didn't bring.

Q Could you have brought them with you? Would it have been possible to bring them with you, what you have?

A I don't think so.

Q They're that many? How much shelf space does it occupy?

MR. DONOHUE: He's testified he doesn't know counsel, he doesn't do the filing. Let's move on.

BY MR. GIFFORD:

Q Do you know, Mr. Arakawa, how much file you have?

A No.

Q Did you look prior to this deposition?

A Look what?

Q Look at the files. Was this request shown to you, Mr. Arakawa?

A Yes.

Q Did you look to see what you had in response to any of these requests for documents?

MR. DONOHUE: There's no need to tell him what our communications were as to what you and I spoke about in terms of responding to the request for production.

MR. GIFFORD: Would you read the question back?

I didn't ask for that.

(Record repeated.)

A Yes.

Q But you didn't look to see what you had in response to the request numbered paragraph fifteen?

MR. DONOHUE: For the record, let's read that, paragraph fifteen.

It says: For each lawsuit brought by Plaintiff and alleging infringing of Copyright Registration No. PA 115-040:

A., A copy of each document filed with the court and in each lawsuit; B., A copy of each deposition (including all exhibits) taken during discovery in each lawsuit; and C., All other documents relating in any way to each lawsuit.

A We don't have fifteen A and B. We have some related documents to each lawsuit.

Q And you didn't bring any of those with you?

A No.

Q Sixteen you brought -- evidently brought today all the documents relating provided to the U.S. Copyright Office and pertaining to the copyright registrations. I have copies of all of those I believe.

A Yes.

Q And with respect to seventeen, your attorney indicates that there are no documents pertaining to any comparison



made between -- made by you between the computer program for Donkey Kong and the logic boards sold by Elcon.

A No.

Q Okay.

MR. GIFFORD: I believe I'm finished.

MR. SPRINKLE: Okay.

CROSS EXAMINATION

BY MR. SPRINKLE:

Q Mr. Arakawa, in a number of the documents related with correspondence with the Copyright Office, have you seen that particular document before?

A I don't remember it.

MR. SPRINKLE: Could we have that marked Exhibit 8, please?

(Exhibit 8 was marked for identification.)

BY MR. SPRINKLE:

Q Can you identify the document, who it's from and what it's concerning, just so we have it on the record?

A I don't know him.

Q Mr. Jackson must be a patent lawyer? Larry Jackson?

A Patent attorney.

Q And where is he located?

A In Seattle.

Q Mr. Arakawa, in this document -- it says it's from Marybeth Peters -- it mentions the ADACDABCD version in

reference to a copyright application. Can you explain what that means?

A I guess this means the sequence of the game.

Q Can you explain what you mean by sequence then?

A In our Donkey Kong there are four phases, four games.

Q What's the first phase then?

A A is the first phase.

Q And B is the next phase?

A The Donkey Kong sold in Japan by Nintendo Company, Limited --

Q Um-hmm.

A -- has sequence of ABCD, and ABCDABCD. And the ones we sold in the United States have ADACDABCD that's written here.

Q The difference between these sequences, I believe you call them, is it speed? Is that one difference between them?

A Speed?

Q Speed of play of the game. What's the difference between the sequence?

MR. SERRITELLA: Mr. Sprinkle, if I may clarify that? Sequence as being compared with what sequence?

MR. SPRINKLE: Fine. Let's compare A and B.

BY MR. SPRINKLE:

Q What's the difference between sequence A and sequence B?

A The A -- sequence A in the game, Donkey Kong throw the barrels on the construction and Mario climbs up the beams.

That's sequence A.

Q Okay. What is sequence B then?

A Sequence B is where there is belt conveyor in the middle of the building structure.

Q I'm sorry? A belt conveyor?

A Belt conveyors included in the game.

Q How about sequence C?

A We usually call sequence C, it's an elevator, it has elevators in it.

Q And how about sequence D?

A Sequence D is the final board. After Mario takes all the pins between the construction, the Donkey -- Donkey Kong falls down.

Q It indicates in the last paragraph, Mr. Arakawa, that the ADACDABCD version was not published in Japan, but it was first published in the U.S. on July 25th; is that correct?

A Yes.

Q Is that the only version that was published in the United States?

A We tested ABCDABCD in Seattle.

Q When were those tests conducted?

A Sometime in July.

Q And what were the results of those tests?

A We compared both ABCDABCD and ADACDABCD, and we found ADACDABCD was better for us to market.



Q Did you test both versions at the same time, if you recall?

A I don't remember.

Q Did you request that the Nintendo Company, Limited provide you with more than one version to test market in the United States?

A Yes.

Q And how many did they provide you, how many different versions?

A Two.

Q And just those two?

A Um-hmm.

Q How did Mr. Jackson know that the ADACD, et cetera, version wasn't published until July 25th in the United States?

A I don't know.

Q Did you tell him?

A I might have, I don't know.

MR. SPRINKLE: Would you mark that for me, please?

(Exhibit 9 was marked for identification.)

BY MR. SPRINKLE:

Q Mr. Arakawa, can you identify Exhibit 9?

A This must be the copyright application.

Q Okay. And also the registration?

1 MR. DONOHUE: Counsel, are you representing that  
2 as the certificate? The problem I think is that the copy  
3 is not very legible and it doesn't have the number on the  
4 top. Is this what was taken from his affidavit?

5 MR. GIFFORD: This is from --

6 MR. DONOHUE: From what we provided you.

7 MR. SPRINKLE: Right. It should have the  
8 registration number on it at the top.

9 MR. DONOHUE: PA 115-040. It's supposed to be  
0 written here.

1 A Yes.

2 BY MR. SPRINKLE:

3 Q For the Donkey Kong game?

4 A Yes.

5 Q The application you indicated that it was signed on behalf  
6 of Nintendo of America by Mr. John K. Donaghy. Do you  
7 know Mr. Donaghy?

8 A No.

9 Q Have you ever discussed the contents of that application  
10 with Mr. Donaghy?

11 A No.

12 Q On Exhibit 9 it indicates in block four that Nintendo  
13 Company, Limited assigned the entire right, title and  
14 interest, et cetera, to Nintendo of America. Do you know  
15 who advised Mr. Donaghy of that?

1 A I don't know.

2 Q In block number one it indicates that Nintendo Company,  
3 Limited is the author of the entire audio-visual work. Do  
4 you know who advised Mr. Donaghy of that particular  
5 statement or fact?

6 A I don't know.

7 Q But you didn't?

8 A Pardon?

9 Q But you didn't?

0 A I don't remember. I'm sorry, I don't remember.

1 Q Did you deposit any work -- did you deposit a copy of the  
2 work Donkey Kong with the Copyright Office when you filed  
3 the application to register the copyright?

4 MR. DONOHUE: Who are you referring to when you  
5 say "you"?

6 MR. SPRINKLE: Nintendo of America.

7 A I don't remember.

8 Q Did you deposit a copy of a video -- do you remember  
9 depositing a copy of a video tape of the Donkey Kong game  
10 with the Copyright Office?

11 A I remember I provided the video game, the tape to Larry  
12 Jackson of Seattle.

13 Q That's this tape --

14 A Yes.

15 Q -- I'm holding in my hand.

What's on the tape, Mr. Arakawa, do you remember?

A No. It's Donkey Kong.

Q You say it's Donkey Kong, what actually is it?

A It's audio-visual work of Donkey Kong.

Q Is it a recording of the play of the game itself?

A I don't know whether it was play mode or actually play.

Q Do you know who made the tape?

A Yes.

Q Who?

A Nintendo Company, Limited.

Q Do you know when it was made?

A I don't.

Q When did Nintendo of America receive it?

A Do you want to know the exact date?

Q If you know the exact date, fine, otherwise I'll take an approximate date.

A Summer 1981.

Q Did you personally request that tape from Nintendo Company, Limited?

A I don't know.

Q Have you ever seen that tape?

A Yes.

Q When did you actually see it?

A Pardon?

Q When did you view that tape?

1 A After we received the tape.

2 Q Do you know how many copies of that tape there are?

3 A I don't.

4 Q Has that tape ever been shown publicly, that video tape?

5 A What do you mean by publicly?

6 Q Been shown to an audience.

7 A No.

8 Q I believe you indicated to me earlier that you didn't deal  
9 personally with Mr. Donaghy. Did you deal personally with  
0 anyone at his law firm?

1 A Pardon?

2 Q Did you deal personally with anyone at his law firm?

3 A No.

4 Q Just so we're all talking about the same thing, Mr.  
5 Arakawa, can you give me a relatively brief description of  
6 the Donkey Kong game and we can at least use the same  
7 terminology. Will you?

8 A I'm reluctant to describe it because of my English.

9 Q Are a number of ladders displayed on the screen? Ladders?

20 A In the -- yes.

21 Q And does -- I'm going to call him a gorilla. Does the  
22 gorilla stand on top of these ladders?

23 A Most of the case.

24 Q And does a blond-haired girl, is she captured by the  
25 gorilla up at the top of the ladders?



1 A Captured?

2 Q Held prisoner.

3 A Yes.

4 Q And does a Jump Man or a character attempt to climb the  
5 ladders to rescue the girl?

6 A Yes.

7 Q What portions -- are there any other portions that you  
8 think are significant with the Donkey Kong game?

9 MR. DONOHUE: What do you mean by significant,  
0 in what context? The whole game is significant.

1 BY MR. SPRINKLE:

2 Q What portions of the audio-visual display does Nintendo of  
3 America consider to be original to it, protected by its  
4 copyright?

5 A The game itself.

6 Q How about the gorilla character alone?

7 A I don't know.

8 Q How about the blond-haired girl?

9 A I don't know.

20 Q How about the ladders?

21 A I don't know.

22 MR. DONOHUE: You're asking him for legal  
23 conclusions. He's indicated that he believes the game  
24 itself is copyrightable, which means that it would be  
25 original subject matter with Nintendo.

1 MR. SPRINKLE: I'm asking him which portions of  
2 it he considers to be original. If they have a score on  
3 the bottom that says score one hundred, does he consider  
4 that to be original with Nintendo of America or Nintendo  
5 Limited Company?

6 MR. DONOHUE: Nintendo Company, Limited.

7 MR. SPRINKLE: Nintendo Company, Limited.

8 MR. DONOHUE: Do you understand the question?

9 A I said game itself. Have you seen the game?

10 Q Portions of it.

11 A Portion of it. Would you please look at the game?

12 Q Well, that's not really the question I asked. The  
13 question I asked, do you consider every single -- do you  
14 consider the entire audio-visual display of Donkey Kong to  
15 be what's original with Nintendo?

16 A Yes.

17 Q Are you familiar with the movie known as King Kong?

18 A I've heard of it.

19 Q Have you ever seen it?

20 A No.

21 Q What have you heard about it?

22 A Pardon?

23 Q What have you heard about it?

24 A The name of King Kong?

25 Q The movie King Kong.

1 A I heard of the name King Kong.

2 Q Have you ever heard of the movie King Kong, the movie?

3 A Yes.

4 Q What have you heard about it?

5 A The only thing it was a movie named King Kong.

6 Q Do you know the plot?

7 A Pardon?

8 Q Do you know the plot?

9 A What's plot?

10 Q The storyline.

11 A No.

12 Q Are you familiar with an arcade game -- a video arcade  
13 game known as Space Panic?

14 A Yes.

15 Q Does it have ladders?

16 A Pardon?

17 Q Does it have ladders?

18 A Yes.

19 Q I'm going to try not to be repititious. As I understood  
20 it before, Nintendo of America imports logic boards -- all  
21 of the logic boards from Nintendo Company, Limited?

22 A Yes.

23 Q Its parent company?

24 A Yes.

25 Q Now, when the logic boards are imported do they include



1 the ROMS already in the logic boards?

2 A Yes.

3 Q Does Nintendo of American have any facilities that would  
4 enable it to program its own ROMS?

5 A No.

6 Q It does not have a ROM programmer?

7 A I don't know. What's ROM programmer?

8 Q Does it have any equipment that would enable it to take a  
9 ROM -- well, let's back up.

0 You do know what the ROM is?

1 A Yes.

2 Q Okay. What is a ROM? It's a memory block, is that  
3 correct?

4 A I don't know what you call it. If I see it, I can  
5 identify it.

6 Q Do you have a machine known as a ROM programmer which  
7 would enable an unprogrammed ROM to be inserted into it  
8 and then programmed in a certain fashion?

9 A I don't know exactly what you mean by that.

20 MR. DONOHUE: I think his answer is he doesn't  
21 know if they have one or not.

22 BY MR. SPRINKLE:

23 Q Would your technicians know?

24 A Yes.

25 Q Do you have any engineers at all?

1 A We have technicians.

2 Q Do you have a Chief Technician?

3 A Yes.

4 Q Does Nintendo of America have facilities -- well, I'm  
5 going to back-up and go through this again.

6 Do you know what ASCII code is? A-S-C-I-I; all  
7 caps.

8 A No.

9 Q Would your technicians know?

10 A I don't know.

11 Q Do you have any programmers at Nintendo of America,  
12 computer programmers?

13 A No.

14 Q Do you have any equipment at Nintendo of America that  
15 would enable you to examine a ROM and determine what the  
16 contents of its memory are?

17 A I don't think so.

18 Q Do you know what a memory dump of a ROM is?

19 A No.

20 Q Has any Defendant in any lawsuit brought by Nintendo of  
21 America provided a listing of the memory contents of the  
22 Donkey Kong game to you during discovery --

23 A Yes.

24 Q -- if you know?

25 A Yes.

1 Q They have?

2 A Yes.

3 Q Was that an ASCII memory dump?

4 A I don't know what that was.

5 MR. SPRINKLE: Did you bring it with you?

6 MR. DONOHUE: I will represent to you, counsel,  
7 that somebody has produced what they represented to be a --  
8 may be a dump or whatever you're referring to of the  
9 Donkey Kong program. We have never been able to ascertain  
0 whether that is a dump, if you will, or whatever the  
1 terminology you want to use of the Donkey Kong.

2 MR. SPRINKLE: An ASCII memory dump is what most  
3 people call it.

4 BY MR. SPRINKLE:

5 Q Have you seen this listing, Mr. Arakawa --

6 A No.

7 Q -- personally?

8 A No.

9 Q Do you know who provided it to Nintendo of America?

10 A We don't have it.

11 Q Do you know who provided this purported listing to  
12 Nintendo of America?

13 A What are you talking about?

14 Q Your counsel -- I don't want to misquote you. But your  
15 counsel has indicated that somebody did provide a listing

1 of the Donkey Kong game and said that that was, in fact, a  
2 listing of the memory dump. Do you know who provided that  
3 listing to Nintendo of America?

4 A That was by the lawyer for one of the Defendants.

5 Q Stern?

6 A I don't think so.

7 MR. SPRINKLE: Do you have any problem with  
8 providing us with a copy of that?

9 MR. DONOHUE: No, I don't have any problem. So  
0 long as you understand that we're not -- that we, again,  
1 have not run any tests on it. We have no idea whether or  
2 not that it's what it purports to be. But I have no  
3 problem sending what was given to us.

4 MR. GIFFORD: Off the record a minute.

5 (Brief discussion held off the record.)

6 BY MR. SPRINKLE:

7 Q Do you have any present plans of obtaining a memory dump  
8 of the Donkey Kong ROMS?

9 A No.

0 Q So you don't -- you have no plans to verify this memory  
1 listing or not, is that how I understand you?

2 MR. DONOHUE: To verify what memory listing?

3 MR. SPRINKLE: The memory listing provided  
4 Nintendo of America by a Defendant in a lawsuit.

5 A I don't know what you mean by several languages.

1 Q Well, let me rephrase it.

2 A We don't have anything about related to programming or  
3 source listing.

4 Q Let me rephrase it.

5 Do you have any present plans of examining the ROMS  
6 of the Donkey Kong game to compare it with the listing  
7 provided you by another Defendant and just mentioned by  
8 your attorney?

9 A No, we have no plan.

0 Q Before we were talking about the hardware in the Donkey  
1 Kong game, can you describe the various what the various  
2 components of the hardware are?

3 A I don't know.

4 Q Well, does it have a monitor?

5 A Pardon?

6 Q Does it have a monitor, a TV monitor? Does it have a TV  
7 monitor?

8 A What are you talking about the TV?

9 Q The hardware components of the Donkey Kong game, what are  
10 they?

11 A What's hardware component?

12 Q The electronics.

13 MR. SERRITELLA: Do you understand the words  
14 he's asking you, Mr. Arakawa.

15 MR. SPRINKLE: I'll rephrase them, Mr. Arakawa.



1 I mean, you used the word before.

2 A What's hardware?

3 MR. SERRITELLA: Is that a word that's unknown  
4 to you?

5 A Hardware components means electric components.

6 Q Yes.

7 A What are the electric components of Donkey Kong?

8 Q Exactly.

9 A TV monitors, power supply, transformer.

10 Q Logic board?

11 A Is it electric? I don't think it's electric.

12 Q Electric? We are saying the same thing, right?

13 MR. SERRITELLA: He asked you if you meant is it --  
14 is that an electric component.

15 MR. SPRINKLE: I'm not answering questions today.

16 MR. SERRITELLA: Well, the witness doesn't  
17 understand you and he wants to try to answer your  
18 questions.

19 BY MR. SPRINKLE:

20 Q Yes. I'm asking for all of the electric components of  
21 Donkey Kong. So far you've said the TV monitor, the power  
22 supply, the transformer.

23 A Yes.

24 Q Does it have other electric components?

25 A No.

1 Q The logic board is, in fact, run by electricity, isn't it,  
2 Mr. Arakawa?

3 A Yeah, that's right.

4 Q And how about flourescent light or switches?

5 What's the actual components cost for the Donkey  
6 Kong game, do you know?

7 A The cost of components alone, that's what -- I don't like  
8 to answer to that question.

9 MR. DONOHUE: Can we go off the record for a  
10 minute?

11 MR. SPRINKLE: Well, I think we ought to discuss  
12 that on the record. Those questions were asked Mr. Dubel  
13 and you insisted upon an answer. I'd like an answer, too.

14 MR. DONOHUE: Why don't we go off the record so  
15 I can speak to my client.

16 MR. SPRINKLE: Okay.

17 (Brief recess taken.)

18 MR. DONOHUE: Back on the record. Would you  
19 read the last question back, please?

20 (Record repeated.)

21 BY MR. SPRINKLE:

22 Q Have you discussed this or will you answer the question  
23 now, Mr. Arakawa?

24 A It's about a thousand dollars.

25 Q Does that include the cabinet?

1 A No.

2 Q And how much of that does the TV monitor cost?

3 A I don't have the breakdown.

4 Q How about the logic board, do you know how much the logic  
5 board costs?

6 A I think it's about four hundred dollars.

7 Q Do you ever replace the ROMS in a logic board?

8 A Pardon?

9 Q Do you ever replace the ROMS in a logic board?

10 A Myself?

11 Q Nintendo of America.

12 A Yes.

13 Q What do they replace them with -- well, why would they  
14 replace them?

15 A Pardon?

16 Q Why would Nintendo of America replace the ROMS?

17 A Sometimes we find defects.

18 Q Where do you get the ROMS that you replace them with?

19 A We buy locally and also we buy from Nintendo Company,  
20 Limited.

21 Q Locally and from Nintendo Company, Limited?

22 A Yes.

23 Q What is the cost of just the ROMS for the Donkey Kong  
24 game?

25 A I don't remember.

1 Q Do you buy pre-programmed ROMS from Nintendo Company,  
2 Limited?

3 A It comes with the game. It comes with the game.

4 Q How about the ROMS that you buy locally?

5 A Nothing in it.

6 Q How do you program them?

7 A We copy the ROMS from one ROM to another.

8 Q So Nintendo of America has a ROM programmer?

9 A Oh, is it ROM programmer?

0 Q Yes.

1 Do you have any problem with providing us with a  
2 breakdown of the cost of the Donkey Kong game,  
3 specifically the cost of the TV monitor, power supply,  
4 transformer, logic board, miscellaneous components?

5 A Pardon? No. I don't like to discuss that.

6 MR. DONOHUE: We consider that confidential  
7 business information, counsel.

8 MR. SPRINKLE: Will you provide us with the cost  
9 of the logic board.

0 MR. DONOHUE: He's already testified to that.

1 BY MR. SPRINKLE:

2 Q Are there documents that will show us what the cost of the  
3 logic board is?

4 A Pardon?

5 Q Does Nintendo of America have documents which will

1 indicate the cost of the logic board?

2 A We have the invoice which showed how much we paid to  
3 Nintendo Company, Limited.

4 Q Would you have any objection to providing us with a copy  
5 of that invoice?

6 A Yes.

7 Q The one thousand dollar components cost that you indicated  
8 before, you indicated that was without the cabinet?

9 A Yes.

10 Q How much does the cabinet cost?

11 A Um, it's between a hundred thirty and a hundred fifty.

12 Q Are there any other components that we haven't covered in  
13 this?

14 A Yes.

15 Q What are they?

16 A There are about four hundred kinds.

17 Q I'm sorry?

18 A There are about four hundred component parts.

19 Q How much is the cost of all the remainder component parts  
20 approximately, if you don't know exactly?

21 A I said a thousand dollars approximately, including  
22 everything.

23 Q That includes the cabinet?

24 A No. With except cabinet.

25 Q Without the cabinet is the only one that you excluded?

1 A Right.

2 Q And would you have any objection to providing us with  
3 copies of the invoices for the ROMS that you obtain  
4 locally?

5 A No.

6 Q But you don't know how much you spend on ROMS right now --

7 A No.

8 Q -- how much a ROM costs?

9 Before when we were discussing Ikegami --

10 A Pardon?

11 MR. DONOHUE: Ikegami.

12 Q When we were discussing Ikegami before, you said that they  
13 worked -- at least I believe you testified that they  
14 worked in conjunction with Nintendo Company, Limited on  
15 the hardware.

16 A Yes.

17 Q Which hardware?

18 A I don't know the detail of the technology.

19 Q Do you know if they worked on the power supply?

20 A I don't know.

21 Q Could you find out?

22 MR. DONOHUE: You'll find some of that  
23 information, counsel, in the declaration of Mr. Yamauchi  
24 that I referred to does deal with Ikegami. That's being  
25 forwarded out tonight.

1 BY MR. SPRINKLE:

2 Q How is -- well, let me back-track.

3 It's my understanding, Mr. Arakawa, that the Donkey  
4 Kong utilizes a computer program in ROMS that forms the  
5 display on the screen, is that correct, is that your  
6 understanding?

7 A I don't know.

8 Q Would your technicians know?

9 A I don't know.

10 Q Who is your Chief Technician?

11 A John Pedersen.

12 Q Spell the last name, please?

13 A P-e-d-e-r-s-e-n. John Pedersen.

14 Q How many lawsuits has Nintendo of America brought for  
15 copyright infringement of its Donkey Kong copyright  
16 registration?

17 A What's your question?

18 Q How many different lawsuits has Nintendo of America  
19 brought for copyright infringement regarding the Donkey  
20 Kong game?

21 A I don't know, maybe between twenty and thirty.

22 Q Is there anyone at Nintendo of America that has more  
23 information regarding the lawsuits than you?

24 A No.

25 Q Do you know how many total Defendants are involved?

1 A Pardon?

2 Q Do you know how many total Defendants are involved?

3 A I don't know.

4 Q Has any case been settled?

5 A Yes.

6 Q How many?

7 A I don't remember.

8 Q Do you know the terms of that settlement or settlements?

9 A I don't remember.

0 Q Have you requested a Preliminary Injunction in other  
1 lawsuits than this one?

2 A Yes.

3 Q In all of them?

4 A Yes.

5 Q Have you ever been denied a Preliminary Injunction?

6 A No.

7 Q Have you obtained -- excluding this case, have you  
8 obtained a Preliminary Injunction in other cases?

9 A Have we obtained?

0 Q Has Nintendo of America obtained a Preliminary Injunction  
1 of some scope in the other cases?

2 MR. DONOHUE: He's just testified to that. You  
3 asked for a Preliminary Injunction in every case and we've  
4 gotten one in every case.

5 Q So this is the only case -- well, is this the only case



1 that a Preliminary Injunction -- that Nintendo of America  
2 does not have a Preliminary Injunction?

3 A I don't know.

4 MR. SPRINKLE: Let me go off for a second.

5 (Brief discussion held off the record.)

6 MR. SPRINKLE: I'm all set.

7 CROSS EXAMINATION

8 BY MR. HANSCHER:

9 Q Mr. Arakawa, I believe you identified one of the licensees  
10 of Nintendo Company, Limited as being a Sega -- S-e-g-a --  
11 Corporation, is that correct?

12 A Who licensee?

13 Q Licensee of Nintendo Company, Limited?

14 A Yes.

15 Q Do you know whether that company is also known as Segasa,  
16 Incorporated?

17 A Segasa? I've never heard of it.

18 MR. DUBEL: It's not.

19 A No.

20 Q Do you know a Mr. Burt Segel?

21 A No.

22 Q I believe you indicated that Sega also did business in the  
23 United States; is that correct?

24 A Who?

25 Q Sega?

1 A Sega.

2 Q I'm sorry. Sega?

3 A Sega is a U.S. company.

4 Q All right. Do you know if they also do business in Spain?

5 A I don't know.

6 Q Do you know whether they've ever been in the pinball  
7 business?

8 A I don't know.

9 Q Could you tell me when you first became aware of a video  
10 game known as Congorilla?

11 A When?

12 Q Yes. When?

13 A Either the end of last year or the beginning of this year.

14 Q Can you be more specific than that. Do you know the month?

15 A I don't know.

16 Q How did you become aware of the game Congorilla?

17 A We received phone calls from our distributors.

18 Q What distributors specifically?

19 A Betson Enterprises, Active Amusement.

20 Q Could you tell me where these businesses are located?

21 A Active is located in Philadelphia.

22 A Betson Enterprises is located in Moonachie, New Jersey.

23 Q Could you spell the first for me?

24 MR. SERRITELLA: Newark?

25 A M-o-o-n-a-c-h-i-e.

And other distributors.

Q I'm sorry. I couldn't hear your answer.

A And other distributors.

Q What were the name of the other distributors?

A Bally Northeast.

Q Could you spell that?

A B-a-l-l-y. Northeast.

Q And where's that located?

MR. DUBEL: Boston.

A Somewhere outside Boston.

Q Was there any other distributors that called you about the Congorilla game?

A I don't remember.

Q Have you examined any of the Congorilla games?

A I saw a game.

Q Could you tell me whether that game is the same as a Donkey Kong?

A Pardon?

Q Is it the same as a Donkey Kong or is it different?

A In what regard?

Q Is the Congorilla --

A It's a different name.

Q Yes. It's a different name. But is the game itself the same?

A Similar.

1 Q In what way is it similar?

2 A Similar game.

3 Q All right. We'll go about this maybe an easier way.

4 In what way is it dissimilar to the Donkey Kong?

5 A The game itself is similar.

6 Q I'm asking you for differences between Donkey Kong and  
7 Congorilla.

8 A I don't remember the differences.

9 Q Okay. Were there differences?

10 A Pardon?

11 Q Were there differences?

12 A I don't remember the differences.

13 Q Okay. You don't know if they were different, is that what  
14 you're telling me?

15 A Right.

16 Q When did you first see a Congorilla game?

17 A The beginning of this year, I believe.

18 Q And where did you examine the Congorilla game?

19 A I saw it in New Jersey.

20 Q Where in New Jersey?

21 A Fort Lee in New Jersey.

22 Q What was the name again?

23 A Fort Lee. F-o-r-t L-e-e.

24 Q How did it come about that that you saw this Congorilla  
25 game?



1 A I happened to see it.

2 Q Did one of your distributors tell you where one was?

3 A No. I just dropped in the bowling alley and found it.

4 Q Could you tell me whether the Congorilla game that you saw  
5 in the bowling alley had a seal indicating that it was a  
6 licensed Nintendo game?

7 A I don't remember.

8 Q Do you recall if you tried to determine whether there was  
9 a seal on the equipment?

10 A Pardon?

11 Q Do you recall whether you tried to determine whether there  
12 was a seal on the equipment?

13 A I don't think so.

14 Q Have you seen any other Congorilla games besides the one  
15 in the bowling alley?

16 A I don't remember.

17 Q Is Nintendo of America involved in litigation with U.S.  
18 Amusements, Incorporated?

19 A Yes.

20 Q Could you tell me when that case was filed?

21 A I don't remember.

22 Q Do you know approximately?

23 A Spring this year.

24 Q And where was that case filed?

25 A New Jersey.



Q Is that Federal District Court?

A I believe so.

Q Is that case still pending?

A I don't know.

MR. DONOHUE: Counsel, would you like my unsworn testimony?

MR. HANSCHKE: Certainly.

MR. DONOHUE: It was filed in February in Newark in the United States Federal District Court Before Judge Lacey. It's still pending.

BY MR. HANSCHKE:

Q Are there other Defendants in that case?

A I think so.

Q Are there any distributor Defendants in that case?

A I don't know.

Q Any problem in providing me with that information after you review your files?

MR. DONOHUE: Do you want me to do it now?

MR. HANSCHKE: Yeah.

MR. DONOHUE: Sure. The initial suit was Nintendo of America versus Myron Sugerman and U.S. Amusements, those two Defendants. Then there's recently been filed another lawsuit which we are currently consolidating. That suit was filed a couple of weeks ago, it's Nintendo of America versus Ajax Amusements, and that

1 will have quite a few parties into it, and it will be  
2 consolidating the two.

3 MR. HANSCHKE: We're talking about distributors  
4 in the second lawsuit?

5 MR. DONOHUE: That's correct.

6 MR. HANSCHKE: All right. And where will that be  
7 consolidated? The second case was also filed in New  
8 Jersey and it's been assigned to Judge Lacey.

9 MR. HANSCHKE: I'd like this marked -- just mark  
10 them together.

11 (Exhibit 10 was marked for identification.)

12 BY MR. HANSCHKE:

13 Q Mr. Arakawa, I draw your attention to Defendant's Exhibit  
14 10. Have you ever seen those documents before?

15 A Yes. This is 9.

16 Q It's Exhibit 10.

17 I would like you to identify this document for me.

18 A Yes. This is the advertising material we used for trade  
19 magazines.

20 Q And were those published at your direction?

21 A Pardon?

22 Q Were they published at your direction?

23 A Your direction?

24 Q Did you decide to have those published?

25 A Yes.

1 Q Okay. Could you tell me when they were first published?

2 A I believe it was March.

3 Q March of 1982?

4 A Yes.

5 MR. DONOHUE: Excuse me, just a minute, counsel.  
6 You've got two of them here.

7 MR. HANSCHKE: Yes.

8 MR. DONOHUE: Do you want to ask the questions  
9 separately or do you want to know when the original  
10 infringement publication was made?

11 MR. HANSCHKE: If the answers to the questions  
12 are different, I'd like to have him specify.

13 A This was before this one.

14 Q Okay. Why don't you identify it by the heading.

15 A Wanted.

16 Q Okay. The wanted, when was that first published?

17 A I believe March 1982.

18 Q Do you remember approximately what time of the month March  
19 '82?

20 A No.

21 Q What magazines did it appear in?

22 A Pardon?

23 Q What magazines did it appear in?

24 A Play Meter, Replay and Canadian Coin Box.

25 Q And how frequently was the wanted published?



1 A Play Meter is twice a month. Replay is once a month.  
2 Canadian Coin Box is once a month.

3 Q How many times total have they been published?

4 A I don't remember.

5 Q Are they still being published up to the current date?

6 A No.

7 Q All right. You don't know when you stopped publication?

8 A I don't remember.

9 Q Okay. Now, referring to the second one?

10 A Yes.

11 Q Now, what's the heading on that?

12 A Nintendo joins.

13 Q Okay. Now, when was that first published?

14 A Must be last year. I don't know when on that.

15 Q Okay. What magazines was it published in?

16 A Same magazines.

17 Q It was published last year?

18 A Yes.

19 Q Do you know the month of the year?

20 A I don't.

21 Q Do you know how frequently it was published?

22 A I don't.

23 Q But it was published in the same three magazines?

24 A Yes.

25 Q And do you know when you stopped publication?

1 A I don't.

2 Q Do you know whether you had any notices published  
3 specifically mentioning the Congorilla game?

4 A No.

5 Q Could you tell me why you did not have Congorilla game  
6 mentioned?

7 A I don't know.

8 MR. DONOHUE: Are you talking about advertising  
9 only or press releases, too?

0 MR. HANSCHKE: I'm asking for publications.

1 A Any publications?

2 Q Publications.

3 A I believe we put the press release in those three  
4 magazines about Congorilla, too.

5 Q Okay. When was that?

6 A Spring this year, I believe.

7 Q Do you know what month?

8 A No.

9 MR. DONOHUE: Counsel, a copy was made as an  
10 Exhibit to Mr. Dubel's deposition.

11 MR. HANSCHKE: I haven't seen it. Could you  
12 provide that to me?

13 MR. DONOHUE: Did you order a copy of Mr.  
14 Dubel's deposition?

15 MR. HANSCHKE: No. I wasn't there. My client



1 wasn't even served at the time of deposition.

2 BY MR. HANSCHKE:

3 Q Okay. In the press release mentioning the Congorilla game --

4 A Yes.

5 Q -- and that was published in what magazines?

6 A I believe by those three magazines.

7 Q Could you tell me whether you had North American Interstate  
8 contacted directly regarding the Congorilla games?

9 A I don't know.

10 MR. HANSCHKE: No further questions.

11 MR. DONOHUE: Let's take a minute.

12 (Brief recess taken.)

13 MR. GIFFORD: I think we've agreed that Mr.

14 Arakawa will sign it before a Notary, but not necessarily  
15 you; before any Notary. And so you'll send him out the  
16 original and have him sign it.

17 (Deposition concluded.)

18  
19  
20 

MINORU ARAKAWA

21 Subscribed and sworn to before me this  
22 21st day of January, 1983, A.D.

23 

24 Notary Public within and for the  
25 County of KING

State of Washington

My Commission expires: July 15, 1984

1  
2 STATE OF MICHIGAN     )  
                              )   ss.  
3 COUNTY OF WAYNE     )

4                   I, Hollis M. Harriman, Notary Public  
5 within and for the County of Wayne, State of Michigan, do hereby  
6 certify that the witness whose attached deposition was taken  
7 before me in the above-entitled matter was by me duly sworn to  
8 tell the truth, the whole truth, and nothing but the truth in  
9 the cause aforesaid; that the testimony contained in the said  
10 deposition then given by said witness was by me recorded  
11 stenographically in the presence of said witness, and  
12 afterwards transcribed under my personal supervision.  
13 The attached is a true and accurate transcript of the  
14 proceedings as reflected in my stenographic notes taken.

15                   I further certify that I am not  
16 connected by blood or marriage with any of the parties or their  
17 attorneys, and that I am not an employee of either of them,  
18 nor financially interested in the action.

19                   IN WITNESS WHEREOF, I have hereunto  
20 set my hand at Detroit, Michigan, County of Wayne, State  
21 of Michigan, this 18th day of August, 1982.  
22

23 Hollis M. Harriman  
24 HOLLIS M. HARRIMAN, CP, RPR, CSR-2090  
25 County of Wayne, State of Michigan  
My Commission Expires: 3-19-86



ERRATA SHEET - DEPOSITION OF:

MINORU ARAKAWA

[illegible]

UNITED STATES OF AMERICA  
IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

NINTENDO OF AMERICA, INC.,  
a Washington corporation,

Plaintiff,

-vs-

ELCON INDUSTRIES, INC., et alia,

Defendants.

Civil Action No.  
82-72398

The discovery deposition of MINORU ARAKAWA,  
taken pursuant to Notice of Taking Deposition between Counsel  
for the respective parties, before Hollis M. Harriman,  
CSR-RPR, R-2090, a Notary Public within and for the County of  
Wayne, State of Michigan, at 280 North Woodward Avenue,  
Suite 210, Birmingham, Michigan, on Tuesday, August 17, 1982,  
commencing about 11:00 o'clock in the forenoon.

APPEARANCES:

JAMES P. DONOHUE, ESQ.  
Sax and MacIver  
1700 Peoples National Bank Building  
1415 Fifth Avenue  
Seattle, Washington 98171  
(206) 624-1940  
Appearing on behalf of the Plaintiff.

JOSEPH J. SERRITELLA, ESQ.  
NANCY S. KATZ, ESQ. P-32053  
Pepper, Hamilton & Scheetz  
100 Renaissance Center - 36th Floor  
Detroit, Michigan 48226  
(313) 259-7110  
Appearing on behalf of the Plaintiff.

109

1 APPEARANCES CONTINUED:

2 ERNEST I. GIFFORD, ESQ. P-13964  
 3 DOUGLAS W. SPRINKLE, ESQ. P-25326  
 4 Gifford, VanOphem, Sheridan & Sprinkle, PC  
 5 280 North Woodward Avenue - Suite 210  
 6 Birmingham, Michigan 48011  
 7 (313) 647-6000  
 8 Appearing on behalf of ELCON INDUSTRIES, INC.

9 JEFFREY A. HANSCH, ESQ. P-27570  
 10 Livingston & Hansche  
 11 2400 Union Lake Road  
 12 Union Lake, Michigan 48085  
 13 (313) 363-4104  
 14 Appearing on behalf of NORTH AMERICAN  
 15 INTERSTATE, INC.

16 \* \* \*  
 17 \* \* \*  
 18 \*

19 W I T N E S S I N D E X  
 20 MINORU ARAKAWA

21	Cross Examination by Mr. Gifford.....	3
22	Cross Examination by Mr. Sprinkle.....	96
23	Cross Examination by Mr. Hansche.....	120

24 E X H I B I T I N D E X

25	Elcon Exhibit 1.....	66
	Elcon Exhibit 2.....	67
	Elcon Exhibit 3.....	74
	Elcon Exhibit 4.....	76
	Elcon Exhibit 5.....	79
	Elcon Exhibit 6.....	81
	Elcon Exhibit 7.....	83
	Elcon Exhibit 8.....	96
	Elcon Exhibit 9.....	99
	North American Interstate Exhibit 10.....	126

Birmingham, Michigan

Tuesday, August 17, 1982

At About 11:00 AM

- - -

MR. GIFFORD: We want the record to reflect that Mr. Arakawa is appearing today in response to a Rule 30 (b)(6) Notice originally scheduled for July 15th, 1982 and adjourned until today.

M I N O R U      A R A K A W A ,  
was thereupon called as a witness herein, and after having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was questioned and testified as follows:

CROSS EXAMINATION

BY MR. GIFFORD:

Q    Mr. Arakawa, will you give us your full name and address, please?

A    Minoru Arakawa. 8416 Northeast 21st Place, Bellevue, Washington, 98004.

Q    Mr. Arakawa, is it your understanding that you're appearing here today on behalf of Nintendo of America, Inc.?

A    Yes.

Q    And that the testimony you're giving today is testimony on behalf of that company?



1 A Yes.

2 Q What is your relationship to Nintendo of America, Inc.?

3 A I'm the President.

4 Q How many employees does Nintendo have?

5 A About fifty.

6 Q And what does Nintendo of America do, what's their line of  
7 business?

8 A We manufacture, sell and distribute coin-operated video  
9 games, and also we are in the consumer product.

10 Q How are you in the consumer product, what do you mean by  
11 that?

12 A We sell and distribute hand-held electronics toys.

13 Q Now, when you say you manufacture video games, does that  
14 include the Donkey Kong game?

15 A Yes.

16 Q Do you manufacture it in total in the U.S.?

17 A What do you mean in total?

18 Q Is the total game made here, the entire game, is it made  
19 by Nintendo of America, Inc. or do you buy some of the  
20 best pieces from other places?

21 I'm trying to figure out what it is you do. Do you  
22 manufacture each of the elements that go into the game, do  
23 you buy elements and assemble the games?

24 A We assemble the pieces.

25 Q Where do you buy the pieces, are they all bought in the

1 U.S.?

2 A Most of them are bought in Japan.

3 Q Are they bought from Nintendo, Limited; any of them?

4 A Nintendo Company, Limited.

5 Q Yes. That is the name of the Japanese company?

6 A Yes.

7 Q Are any of the parts bought from them?

8 A Yes.

9 Q What parts are bought from them?

10 A PC boards, TV monitors, power supplies, transformers, and  
11 name plates, screens. And that's all.

12 Q Cabinets?

13 A No.

14 Q They're bought here in the U.S.?

15 A The ones we assemble, yes.

16 Q Do you manufacture cabinets yourself?

17 A No.

18 Q What's the relationship between Nintendo of America, Inc.  
19 and Nintendo, the Japanese company, whatever it's called?

20 A What's the name?

21 Q What is Nintendo Company, Limited of Japan?

22 A Yes.

23 Q What's the relationship between that company and Nintendo  
24 of America, Inc.?

25 A Nintendo Company, Limited is the parent company of

1 Nintendo of America, Inc..

2 Q Does it own all of the stock of Nintendo of America, Inc.?

3 A Yes.

4 Q How did you obtain your job as President of Nintendo of  
5 America, Inc., who appointed you to that position?

6 A The President of Nintendo Company, Limited.

7 Q The Japanese company?

8 A Nintendo Company, Limited.

9 Q That's the Japanese company, is that correct?

10 A Yes.

11 Q Who are the Board of Directors of Nintendo of America,  
12 Inc.?

13 A Myself.

14 Q You're the only one?

15 A Yes.

16 Q Are there any Directors from Nintendo Company, Limited  
17 that are also -- are there any Directors of Nintendo of  
18 America, Inc. that are Officers or Directors of Nintendo  
19 Company, Limited?

20 A No.

21 Q Does Nintendo Company, Limited exercise any control over  
22 what you do? Do you report to somebody at Nintendo  
23 Company, Limited?

24 A Yes.

25 Q Who do you report to there?

1 A To the President.

2 Q How often do you report?

3 MR. DONOHUE: By that question are you saying  
4 how often does he have communication with them?

5 MR. GIFFORD: Yes.

6 MR. DONOHUE: Or are you using report in the  
7 general sense of communication or are you using the report  
8 in the sense of an official meeting with the President.

9 MR. GIFFORD: No. I'm not using it in the sense  
10 of an official meeting. I'm interested in what the  
11 contacts are between him and the people at Nintendo  
12 Company, Limited, so his personal contacts with those  
13 people. And he also indicated he reports to the President  
14 of Nintendo Company, Limited, and I'm wondering how  
15 frequent those reports are.

16 BY MR. GIFFORD:

17 Q Is this something you do on a daily basis, a weekly basis,  
18 a monthly basis?

19 A We don't do it regularly.

20 Q Okay.

21 A Only when it's necessary.

22 Q When was your last time that you did it, that you reported  
23 to the President?

24 A Um, I don't remember.

25 Q Do you go there or do you carry on those --

1 A Pardon?

2 Q Do you go to Japan or do you do your reporting by  
3 telephone, or telex, or letter?

4 A In most cases we report by telex.

5 Q When was the last time you were in Japan?

6 A I believe September last year.

7 Q September of?

8 A 1981.

9 Q Were you there to report the progress of the company to the  
10 parent company?

11 A The main reason of my visiting Japan is to see the  
12 coin-operated video show in Harumi. H-a-r-u-m-i.

13 Q How long have you been President of Nintendo of America?

14 A Since April 1980.

15 Q And how long has the company been in existence?

16 A Same period.

17 Q You are the only President that the company has ever had?

18 A Yes.

19 Q What was your position before that time, what did you do  
20 before then?

21 A I worked for Marc-Narod Enterprises, Limited. M-a-r-c  
22 dash N-a-r-o-d.

23 Q What's the nature of that company? Where are they  
24 located, first of all?

25 A Vancouver, Canada.

1 Q What do they do?

2 A It is development and construction company.

3 Q That's nothing to do with video games?

4 A No.

5 Q Was April 1980 your first contact with Nintendo?

6 A Yes.

7 MR. GIFFORD: Mr. Dubel. Off the record.

8 (Mr. Dubel entering deposition room.)

9 (Brief discussion held off the record.)

10 MR. GIFFORD: Back on the record.

11 BY MR. GIFFORD:

12 Q Was your first contact with video games in April of 1980  
13 then, in terms of your work? I don't mean in terms of  
14 operating.

15 A April 1980 is the time when we formed the company and we  
16 were not in the business yet.

17 Q Okay. Had you had any previous experience with the  
18 manufacture, sale, or operation of video games prior to  
19 your association in April 1980 with Nintendo of America,  
20 Inc.?

21 A No.

22 Q Had you had any association with Nintendo Company,  
23 Limited, or any of its subsidiaries, prior to April 1980?  
24 A No.

25 Q Are you a U.S. citizen?



1 A No.

2 Q What citizenship are you?

3 A Japan.

4 Q What is your educational background, Mr. Arakawa?

5 A I graduated from Kyoto University.

6 Q With what kind of degree?

7 A Bachelor and Master.

8 Q In what?

9 A Civil Engineering.

10 Q When was that?

11 A I think I graduated from the Kyoto University in 1968.

12 Q When did you go to work for Marc-Narod?

13 A From 1977 to 1980.

14 Q Who did you work for between 1968 and 1977?

15 A Marubeni Corporation.

16 Q How do you spell that?

17 A M-a-r-u-b-e-n-i. Corporation.

18 Q Where are they located?

19 A Tokyo, Japan.

20 Q And what did you do there?

21 A I was a member of University development and construction  
22 development.

23 Q And what does Marubeni do? What's the nature of their  
24 business?

25 A It's a trading company.

1 Q Any relationship between Marubeni and Nintendo?

2 A No.

3 Q How did you come to be employed by Nintendo of America,  
4 Inc.?

5 A The President of Nintendo Company, Limited asked me to  
6 join.

7 Q How did he know you?

8 A He's my father-in-law.

9 Q What's his name?

10 A Mr. Hiroshi Yamauchi. H-i-r-o-s-h-i Y-a-m-a-u-c-h-i.

11 Q Are you an Officer of Nintendo Company, Limited?

12 A No.

13 Q Who are the Officers of Nintendo of America, Inc., besides  
14 you?

15 A I'm the only Officer. Oh, I'm sorry. The Officers are  
16 myself as President and Mr. Howard Lincoln as Secretary.

17 Q Is Mr. Lincoln a full-time employee of the company?

18 A No.

19 Q Is he the company's lawyer?

20 A Yes.

21 Q Are there any full-time employees of the company that are  
22 Officers, other than you?

23 A No.

24 Q The company does not have a Vice-President or a Treasurer?  
25 A No.



1 Q Where are the manufacturing facilities of Nintendo of  
2 America located?

3 A Seattle.

4 Q Those are the only ones?

5 A Yes.

6 Q Does the company have any offices anywhere other than  
7 Seattle?

8 A No.

9 Q What's the approximate annual sales of the company?

10 A It's over a hundred million.

11 Q Over a million?

12 A A hundred million.

13 Q A hundred million.

14 What games are you currently manufacturing besides  
15 Donkey Kong?

16 A Donkey Kong, Jr..

17 Q Any others?

18 A No.

19 Q Are these the only two games you've manufactured?

20 A Right now.

21 Q Previously have you manufactured other games, besides the  
22 Donkey Kong and Donkey Kong, Jr.?

23 A No.

24 Q Have you assembled any other games besides those two?  
25 A No.

1 Q Have you sold any other games besides those two?

2 A Yes.

3 Q What games have you sold?

4 A Heavy Fire, and Radar Scope, and very few Sky Skipper.

5 Q Are these manufactured by Nintendo Company, Limited?

6 A Yes.

7 Q All three of them?

8 A Yes.

9 Q Are you still selling those?

10 A No.

11 Q Have you ever sold a game that was not manufactured by  
12 either Nintendo of America, Inc. or Nintendo Company,  
13 Limited?

14 A No.

15 Q How about the consumer products that you were talking  
16 about, other than video games, what are those?

17 A It's hand-held electronics toys.

18 Q And who manufactures those?

19 A Nintendo Company, Limited.

20 Q Have you ever sold anything that wasn't manufactured by  
21 either Nintendo of America, Inc. or Nintendo Company,  
22 Limited?

23 A No, I don't think so.

24 Q Is it safe to say, then, that Nintendo of America, Inc.  
25 is the U.S. sales arm of Nintendo Company, Limited; is

1 that its purpose?

2 A I don't know. It's a subsidiary of Nintendo Company,  
3 Limited.

4 Q When your father-in-law talked to you about becoming  
5 President of the company, what did he tell you that was  
6 the reason for forming the company? Did he indicate why  
7 they wanted a U.S. company?

8 A No, not really.

9 Q Do you recall what he told you at all about the job on  
10 your first contact with him?

11 A Pardon?

12 Q Do you recall at all what he told you that the job would  
13 be when he first talked to you about it?

14 A No, not really.

15 Q Didn't tell you what you'd be doing?

16 A Pardon?

17 Q He didn't tell you what you would be doing in this new  
18 job?

19 A No.

20 Q Do you have any other relatives that are employed by  
21 either Nintendo Company, Limited or Nintendo of America,  
22 Inc.?

23 A No.

24 Q No brothers, sisters, aunts, uncles?

25 A No.

1 Q What is the business of Nintendo Company, Limited, what do  
2 they do?

3 A Because I have never worked for Nintendo Company, Limited,  
4 I don't know very well. But I know they make playing  
5 cards, they make toys, they make Mah-Jong, they make home  
6 videos, and they make amusement machines, and  
7 coin-operated video games. They may make more, but I  
8 don't know.

9 Q How many employees does Nintendo Company, Limited have  
10 approximately, do you know?

11 A No.

12 Q Any idea?

13 A It's over five hundred, but I don't know how many.

14 Q Where are its manufacturing facilities?

15 A In Kyoto.

16 Q Is that the only place?

17 A Yes.

18 Q Do they have any sales offices anywhere else?

19 A They have branch offices.

20 Q In other countries or in Japan?

21 A In Japan.

22 Q Do they sell playing cards, home videos in the U.S.?

23 A I don't know.

24 Q Don't sell them through you?

25 A Pardon?

1 Q They don't sell them through Nintendo of America, is that  
2 correct?

3 A We don't sell.

4 Q Do you know if they sell anything in the U.S., other than  
5 what's sold through Nintendo of America, Inc.?

6 A I don't know.

7 Q Do you own any stock in either Nintendo of America, Inc.  
8 or Nintendo Company, Limited?

9 A No.

10 Q Do you know how much your father-in-law -- how much stock  
11 your father-in-law owns, if any, in Nintendo Company,  
12 Limited?

13 A I know he has, but I don't know exactly how many.

14 Q Is it a publicly traded company, do you know?

15 A Yes, it is.

16 Q Do you know what the approximate annual sales of Nintendo  
17 Company, Limited are?

18 A Um, from the newspaper, I was told -- I saw between two to  
19 three hundred million, I think.

20 Q Do you know whether Donkey Kong is sold anywhere other  
21 than Japan, U.S., and Canada?

22 A I believe they sold to Europe.

23 Q Nintendo of America, Inc. is sold in U.S. and Canada, is  
24 that correct?

25 A Yes.

1 Q Do you know who sells in Europe, is it Nintendo Company,  
2 Limited or have they set up a subsidiary there like  
3 Nintendo of America, Inc.?

4 A I don't know.

5 Q When did Nintendo of America, Inc. first become aware that  
6 Crazy Kong games were being sold in the U.S.?

7 A The Fall of 1981.

8 Q Were you aware that those games were being manufactured by  
9 Falcon, Inc. of Japan, at least the game boards at that  
10 time?

11 A I got the information of that.

12 Q It became known to you in the Fall of '81 that Falcon,  
13 Inc. was the source of the Crazy Kong game boards in this  
14 country, is that correct?

15 A I think.

16 Q Was a source? Let me say it that way.

17 A I think it was one of the sources.

18 Q Was one of the sources?

19 A Um-hmm.

20 Q Fall of '81, are you talking about September of '81,  
21 October of '81?

22 A I don't remember it.

23 Q Somewhere around then?

24 A October or November, I believe.

25 Q Do you recall how you first became aware of it?

1 A Yes. I think couple distributors started calling us.

2 Q Where were those distributors located, do you know?

3 A One in Los Angeles and one in Seattle.

4 Q Can you tell me the names of those people, who was it in  
5 Los Angeles?

6 A Betti.

7 Q B-e-t-t-y?

8 A T-t-i.

9 And Ray Galante.

10 Q In Seattle?

11 A Yes.

12 Q Are they associated with a business there?

13 A Yes.

14 Q Do you know the name of the business?

15 A Betson Pacific. B-e-t-s-o-n.

16 Q That's the one in Los Angeles?

17 A Yes.

18 Q And how about Galante?

19 A Music Vend.

20 Q How do you spell that?

21 A V-e-n-d.

22 Q Oh, okay. Music Vend.

23 Did you investigate at that time?

24 A What do you mean by investigate?

25 Q Did you see, did you go out and look at the games, or go

1 out and look at the boards, or did you do anything in  
2 response to these complaints?

3 A Yes. We tried to locate, to find out the fact, whether  
4 that information was right or not.

5 Q And did you conclude whether it was right or not?

6 A Yes.

7 Q Was it correct?

8 A Yes.

9 Q How did you conclude that? Did you go look at the games?

10 A No, not myself.

11 Q Somebody from --

12 A Yes.

13 Q -- Nintendo of America looked at them?

14 Who did that?

15 A I don't remember precisely who it was, but either our  
16 Marketing Managers or our Service Managers.

17 Q From the Seattle office?

18 A Yes.

19 Q Did they report back to you, whoever it was?

20 A Yes.

Q Did they report in writing?

A No.

Q Is this verbally?

A Um-hmm.

Q What did they tell you?



1 A It's a copy of the Donkey Kong.

2 Q Did they tell you where the boards were made, could they  
3 tell from looking at it?

4 A Pardon?

5 Q Could they tell from looking at the game where the boards  
6 were made?

7 A No.

8 Q When did you become aware that Falcon was at least one of  
9 the sources for these boards?

10 A I think a company in Los Angeles were writing letters to  
1 at least Music Vend or Betson Pacific saying Crazy Kong is  
2 available.

3 Q What was the name of the company?

4 A I forgot.

5 Q Yeah. But how did that --

6 A And together with that letter he attached a letter from  
7 Falcon Japan.

8 Q What did the letter from Falcon Japan say? Did it say  
9 Falcon Japan had been licensed to produce Crazy Kong  
boards by Nintendo Company, Limited or words to that  
effect?

A I don't know whether the first letter I saw has that in  
the letter or not.

Q You have seen a letter like that, though?

A Yes.

1 Q Did you discuss this matter with your father-in-law, this  
2 matter of a license between Nintendo Company, Limited and  
3 Falcon Japan?

4 A Yes.

5 Q When did you discuss it with him?

6 A The Fall of 1981.

7 Q Did you do it by telex, by telephone?

8 A I think by telephone.

9 Q Do you have any written correspondence between you and  
10 your father-in-law relating to this matter?

11 A I think so.

12 Q Do you have a file of such correspondence?

13 A Yes.

14 Q What did your father-in-law say to you about Falcon's  
15 claim to have a license?

16 A We found from him that Nintendo licensed Falcon to  
17 manufacture Crazy Kong game in Japan.

18 Q And you discovered that in the Fall of 1981?

19 A Um-hmm.

20 Q Did you inform him that they were selling the boards in  
the U.S.?

21 A Yes.

22 Q What was his position with regard to that, that they could  
or could not do that under the agreement?

MR. DONOHUE: Excuse me. Could I have that

1 question read back again?

2 (Record repeated.)

3 BY MR. GIFFORD:

4 Q Do you understand the question?

5 A Would you repeat that again?

6 Q What I'm asking you is what your father-in-law said with  
7 regard to Falcon's right to sell game boards in the U.S..  
8 Did he say they had a right to do it or that they didn't  
9 have a right to do it?

0 A He said they didn't.

1 Q Did he indicate to you that he would talk to the people at  
2 Falcon and inform them that they didn't have this right?

3 A I don't know.

4 Q He didn't tell you he was going to do that?

5 A He said he's going to.

6 Q But you don't know whether he did or not?

7 A (Nodding negatively.) No.

8 Q Did you ever correspond with anybody at Falcon Japan to  
tell them that they couldn't sell Crazy Kong boards in the  
9 U.S.?

A I remember I received a call from the person, whose name I  
don't remember, and I don't know whether he did represent  
Falcon or not, but he said -- he called me, he complained  
about the Crazy Kong game to the United States.

Q Do you know when that was?

1 A Pardon?

2 Q Do you know when that was?

3 A Fall in 1981.

4 Q But you never made any contact at all with Falcon Japan in  
5 an effort to clarify whether or not they thought they  
6 could sell Crazy Kong game boards in the U.S.?

7 A I didn't contact them.

8 Q When did you first read the agreement between Falcon of  
9 Japan and Nintendo Company, Limited?

0 A Fall in 1981.

1 Q Did you receive that copy from your father-in-law?

2 A From Nintendo Company, Limited.

3 Q From your father-in-law?

4 A From Nintendo Company, Limited.

5 Q Who, what individual, sent it to you from there?

A Export Department.

Q Was it in Japanese?

A Yes.

Q Did you translate it at that time?

A I can read English.

Q You can read and translate it by reading Japanese,  
translate it to English yourself? Was it in English?

A No.

Q Was it in Japanese?

A Yes.

1 Q Did you read it in Japanese?

2 A Yes.

3 Q Did you conclude from that that Falcon Japan could not  
4 sell Crazy Kong boards here?

5 A To?

6 Q Did you conclude from your reading of the agreement at  
7 that time that Falcon Japan could not sell Crazy Kong game  
8 boards in the U.S.?

9 A That's correct.

0 Q When did you take your first action of any kind with  
1 respect to Falcon Japan's sales in the U.S.?

2 A I believe it was 1981.

3 Q But when in 1981?

4 A November or December.

Q And what was the nature of that action?

A What's the nature of the action.

Q Um-hmm. What did you do?

MR. SERRITELLA: Mr. Gifford, I take it you mean  
action other than the action he's already described.

MR. GIFFORD: He hasn't described any action  
yet.

MR. SERRITELLA: I think he's described an  
investigation.

MR. GIFFORD: Okay.

MR. SERRITELLA: Is your question action beyond

1 that?

2 MR. GIFFORD: Yeah. Action beyond the  
3 investigation. Right.

4 A We tried to buy games through our distributor.

5 Q And were you successful in that?

6 A Yes.

7 Q From that did you conclude that Falcon Japan was actually  
8 selling the game boards?

9 A Yes.

0 Q And when was that?

1 A November or December of 1981.

2 Q Did you take any steps after that, with regard to game  
3 boards sold by Falcon Japan?

4 A Yes.

5 Q What did you do?

6 A We sued them.

7 Q Sued Falcon Japan?

8 A No. The people who are selling PC boards or games.

9 Q You sued the customers of Falcon Japan, is that correct?

0 A I don't know whether what kind of relationship between  
1 Falcon and the person we sued, but we sued the person who  
2 are selling PC boards or games in the United States of  
3 Donkey -- of Crazy Kong.

4 Q Did the game boards that you were able to obtain, did they  
5 have stickers on them indicating that the game boards were

1 licensed by Nintendo Company, Limited?

2 MR. DONOHUE: Let me interpose just an  
3 objection. And perhaps a bit of an explanation, counsel.

4 Mr. Arakawa's actions with respect to the -- and  
5 knowledge with respect to the individual lawsuits was very  
6 limited, he's turned that primarily over to his counsel in  
7 that regard. The particular -- the particular operation,  
8 for example, in games purchased, the games are in the City  
9 of Los Angeles. And so I'm going to object to that  
0 question on the grounds of lack of foundation.

1 BY MR. GIFFORD:

2 Q Have you ever seen any games boards with stickers on them  
3 indicating that the boards were licensed by Nintendo  
4 Company, Limited?

A No.

Q Never seen those?

A No.

Q Are you aware that the license agreement between Falcon  
Japan and Nintendo Company, Limited calls for the purchase  
of such stickers --

A Yes.

Q -- by Falcon?

A Um-hmm.

Q And attachment of those stickers to Crazy Kong game  
boards, is that correct?

1 A Attachment to the game I believe.

2 Q To the game itself?

3 A Yes.

4 Q And you've never seen any games with those stickers on  
5 them?

6 A I saw Crazy Kong, but they didn't have stickers.

7 Q They didn't have the sticker.

8 Do you know whether Nintendo Company, Limited of  
9 Japan has brought suit against Falcon, Inc. of Japan?

0 A I heard of it.

1 Q You've heard they have brought suit?

2 A Yes.

Q Do you know anything about that suit; when was it brought,  
what was the basis of it?

(Mr. Donohue handing document to the witness.)

MR. GIFFORD: Counsel, can we see that? Is that  
something you've brought for us?

MR. DONOHUE: Yes.

A Yeah. This is information right here.

BY MR. GIFFORD:

Q You've given me an article that indicates Nintendo has  
brought a suit against -- wins a Preliminary Injunction  
against Falcon, Crazy Kong. Where's that article taken  
from?

A From the trade magazine.



1 Q Amusement Press, Inc.?

2 A Yes.

3 Q A Japanese magazine?

4 A Yes.

5 Q Do you know what the date of it is?

6 A August 15, 1982.

7 Q Do you know why they waited so long to bring the suit?

8 MR. SERRITELLA: Objection to the form of the  
9 question, but he can answer it.

0 Q Do you know why they waited so long to bring this suit?

1 A Can I see it?

2 Q Um-hmm.

3 (Witness reviewing document.)

A I think they applied it in January 1982.

Q Does the article say that?

A This tells they obtained Preliminary Injunction on July  
5th. It doesn't say when they sued.

Q But it's my understanding that you had informed Nintendo  
Company, Limited as early as the Fall of '81 that Crazy  
Kong boards were coming into this country from Falcon; is  
that correct?

A That's correct.

Q And as far as you know, nothing was done by way of a  
lawsuit against Falcon until at least Summer of '82?

MR. DONOHUE: Oh, I object to that. He just

1 testified that the Preliminary Injunction issued in July  
2 of 1982. He hasn't testified as to when the lawsuit was  
3 filed. And, furthermore, when he used the term Fall, you  
4 have to keep in mind his reference before as Fall as  
5 referring to October or November.

6 MR. GIFFORD: What is your objection?

7 MR. DONOHUE: Well, my objection is as to the  
8 form of the question. It's defective because you assume  
9 facts not in evidence. You're assuming that -- you are  
0 making an assumption as to the date of the filing of your  
1 lawsuit based on your saying in Summer, and that isn't the  
2 case. The Preliminary Injunction issued in Summer.

MR. GIFFORD: Do you want to read the question  
again?

(Record repeated.)

MR. GIFFORD: Does he know something was done,  
something prior to the Summer of '82. If he does, I'd  
like to know his answer. If he doesn't, then he can  
answer that question.

MR. DONOHUE: Well, I'm objecting to the form of  
the question as setting it up as that nothing was done  
until Summer of '82. We know that the preliminary  
injunction issued, presumably a lawsuit is filed prior to  
the time a Preliminary Injunction issued, and I just want  
that in terms of his answering the question. You can go

1 ahead and answer the question.

2 BY MR. GIFFORD:

3 Q Do you know whether anything was done prior to July of '82  
4 with regard to a lawsuit between Falcon -- between  
5 Nintendo Company, Limited and Falcon Japan?

6 A I think the lawsuit was filed January or February 1981.

7 Q Now, what --

8 MR. DONOHUE: 1982.

9 A '82.

Prior to that Nintendo Company, Limited sent a registered mail or something to stop them exporting games to U.S..

Q Okay. Now, have you seen that registered letter?

A No.

Q How do you know that?

A From Export Department of Nintendo Company, Limited.

Q They informed you that this had been done?

A Yes.

Q And when was that?

MR. DONOHUE: When was what? When was he informed or when was the action taken?

MR. GIFFORD: When was he informed.

A I don't remember.

Q Were you informed by written correspondence?

A I don't remember.

1 Q If you were, would you have that correspondence?

2 A Pardon?

3 Q If you were, would you still have that correspondence?

4 A Yes.

5 Q What leads you to believe that the lawsuit was started in  
6 January of '82 or thereabouts?

A I think I was informed.

Q And do you recall how you were informed of that?

A No, I don't remember.

Q Did you advise anyone in the trade that this was happening  
in Japan, that a lawsuit was being brought, or that the  
Falcon agreement was being terminated?

A By myself?

Q You or your company.

A I don't know.

Q Would it have been your decision whether or not to inform  
the trade of that fact?

A I don't personally know whether we informed or not, but it  
was the fact, everybody knows.

Q Not everybody knew, because I didn't know until today.

Why didn't you inform the trade that the license  
agreement had been terminated? Wouldn't that have been  
the easiest way to stop people from purchasing Crazy Kong  
game boards originating from Falcon Japan?

What do you mean by trade?

1 Q I mean the people who were buying these boards, the  
2 manufacturers and the assemblers of games.

3 Was it discussed at all?

4 A Discussed?

5 Q Was the idea of informing the trade regarding the  
6 agreement between Falcon Japan and Nintendo Company,  
7 Limited being terminated, was that discussed at all in  
your company?

A I don't think so.

MR. DONOHUE: Counsel, I assume for the purpose  
of that question you are excluding the press releases that  
were part of Mr. Dubel's deposition that clearly indicated  
that the Falcon games were coming into the country without  
authority?

MR. GIFFORD: I'm interested -- as I understand  
those were taken -- those were released after the lawsuits  
were started throughout the country. And I'm asking him  
why the company -- if it was really interested in stopping  
Crazy Kong boards from coming into the country, why it  
elected the route of bringing lawsuits rather than the  
route of informing the trade that the agreement between  
Falcon and Nintendo Company, Limited had been terminated.

BY MR. GIFFORD:

Q Was there any discussion along those lines, why did you  
elect one course over the other?

A As far as I am concerned, in the United States, it doesn't make any difference whether there was agreement between Nintendo Company, Limited and Falcon or not.

Q Is that based upon legal advice?

A Yes.

Q Did you discuss this way of proceeding with your father-in-law?

A No.

Q This was a decision you made on your own to proceed with lawsuits rather than notice?

A My decision.

Q I am correct that the boards that were sold by Falcon Japan in the U.S., that there's no question that a royalty was paid to Nintendo Company, Limited for those boards, is there?

MR. DONOHUE: Object. No foundation.

MR. GIFFORD: What kind of foundation do you want? This is a discovery proceeding for one thing.

MR. DONOHUE: That's fine. I just want it so -- I'm not instructing him not to answer. I'm just advising you now that there's no foundation set for this. If he knows or if he has -- if he has any idea, he can answer the question. But right now there's not a proper foundation for the question.

MR. GIFFORD: If he understands the question, he

can answer. Why don't you quit giving us your law school course on how to protect the witness, because we're going to be here all day if you keep this up.

MR. DONOHUE: No. Go ahead.

BY MR. GIFFORD:

Q Do you want the question read back?

A Would you repeat it again?

MR. GIFFORD: Would you read it for him?

(Record repeated.)

A I don't know.

Q You don't know whether a royalty was paid on those boards or not?

A I don't know.

Q The agreement between Nintendo --

A Pardon me?

Q -- the agreement between Nintendo and Falcon Japan calls for a royalty for Crazy Kong boards produced by Falcon Japan, does it not?

A Yes.

Q How much royalty does it call for, do you recall?

A I don't remember.

Q Is it my understanding that as far as Nintendo of America, Inc. is concerned, it doesn't make any difference whether a royalty was paid, your position would be the same, is that correct?

Yes.

The Donkey Kong games that Nintendo of America, Inc. sells, have they always been assembled by Nintendo of America, Inc., was there ever a time when you purchased complete games from Nintendo Company, Limited?

Yes.

Did those games include a copyright notice?

Yes.

Do you know what a copyright notice is, proper notice?

C circle, 1981, Nintendo of America, Inc..

That's the notice they had on them?

Yes.

The games produced by Nintendo Company, Limited in Japan also had that notice on them?

Oh, I am confused. Which games are you talking about?

I'm talking about the games that were produced in Japan and sold to Nintendo of America, Inc. for resale here.

Yes. They have c circle, 1981, Nintendo of America, Inc..

And they've always had that notice on them, as far as you know?

I think so.

(Mr. Donohue conferring with the witness.)

At the beginning it had only c circle, 1981, Nintendo, but we asked them to change it to c circle, 1981, Nintendo of America, Inc..



MR. DUBEL: What does c circle mean?

BY MR. GIFFORD:

Q Have you seen any Donkey Kong games that are made for sale in Japan?

A Yes.

Q Do they have a copyright notice on them?

A Yes.

Q What's the nature of that notice, do you know?

A How is it written?

Q Yes.

A C circle, 1981, Nintendo.

Q And this is what you asked them to change to Nintendo of America, Inc.?

A Yes.

Q How about the Crazy Kong games, have you seen any of those in Japan?

A No.

Q Have you seen any of those made for sale in Japan?

A No.

Q And have you seen any in the U.S.?

A Yes.

Q Do they have a copyright notice on them?

A I don't remember.

Q How did you first become involved with Michael Dodson?

A Pardon?

Q Do you know Michael Dodson?

A No. Michael?

Q Michael Dodson, that's a person's name. Mr. Dodson submitted an affidavit in this lawsuit.

A No, I don't.

Q You don't know him at all?

A No.

Q Does Nintendo Company, Limited of Japan make its own game boards?

A Yes.

Q Has anybody ever made game boards for that company that you know of?

A No, I don't know.

Q Are the games Crazy Kong and Donkey Kong identical?

A What do you mean by identical?

Q The same, exactly the same.

A Similar.

Q What differences are there, do you know?

A The Crazy Kong I saw had just one PC board and the color was poor. The sound is poor, too.

Q Was the sound the same, other than being poor?

A I don't know.

Q Was the color the same, other than being poor?

A I don't know.

Q Were the graphics the same?



A Yes.

Q Did it have the same attract mode?

A I don't remember.

Q Does Nintendo of America, Inc. own any trademark registrations for either Donkey Kong or any of the characters in that game?

A We have trademark of Donkey Kong.

Q You have the registration for that, U.S. registration?

A We applied.

Q You have an application pending?

A Yes.

Q Do you know the status of that application?

A No.

Q How long ago was it filed?

A Since June or July 1981.

Q And who was the owner of the application, Nintendo of America, Inc. or Nintendo?

A Nintendo of America, Inc.

Q You testified earlier that you've read the agreement between Falcon and Nintendo Company, Limited, is that correct?

A Yes.

Q Do you find anything in that agreement which prevents Falcon from using characters like those used in the Donkey Kong game?

A I have to look at the agreement again.

MR. SPRINKLE: Do you have it?

MR. GIFFORD: I've got it somewhere.

Mr. Arakawa, any time you want to take a break or stretch your legs, or get a cup of coffee or something, just say so.

BY MR. GIFFORD:

Q Let me show you what has been previously marked for a previous deposition as Plaintiff's Exhibit D-3. Is that the English translation of the agreement we've been talking about?

A Do you have Japanese agreement, too?

Q It's in another part of the file. I don't read Japanese.

MR. GIFFORD: Off the record.

(Brief recess taken.)

MR. GIFFORD: Back on the record.

BY MR. GIFFORD:

Q The Japanese version of the agreement is Exhibit H attached to the Complaint.

A What was the question again?

Q The question was whether or not you find anything in that agreement which prevents Falcon from using characters like those shown in Donkey Kong?

Just to correct the record, the Exhibit H is from the attachments to the Motion for Temporary Restraining

Order, rather than --

In fact, the agreement permits Falcon to use the name Crazy Kong, does it not, on the boards it sells? Maybe I can find it here.

Article ten.

A Yes.

Q There is no assignment, I take it, from Nintendo Company, Limited to Nintendo of America, Inc., relating to the trademark Donkey Kong or Crazy Kong, is there?

A I beg your pardon?

Q Is there any assignment relating to these, either the trademark Donkey Kong or Crazy Kong? Any assignment between your Japanese parent company and the American subsidiary relating to this trademark?

A Trademark of Donkey Kong?

Q Um-hmm.

A Nintendo Company, Limited assigned it to.

Q Is there a written assignment of that?

A Yes.

Q Is that a part of some document that has been provided up to now?

A Yes.

MR. DONOHUE: He doesn't know. Counsel, he doesn't know what's been provided.

A Provided to you, you mean?

1 Q Yeah.

2 A I don't know about that.

3 MR. GIFFORD: Has it been provided?

4 MR. DONOHUE: It has not been provided.

5 BY MR. GIFFORD:

6 Q When was that assignment executed?

7 A June or July 1981.

8 Q About the same time as the copyright assignment?

9 A Yes.

10 Q Does that assign Nintendo Company, Limited's rights, if  
11 any, to the term Crazy Kong?

12 A No. It doesn't say anything about Crazy Kong.

13 Q Is it your position that you have the right to prevent  
14 people from using the term Crazy Kong in the U.S.?

15 A I beg your pardon?

16 Q Is it your position that you have the right to prevent  
17 people from using Crazy Kong -- the words Crazy Kong in  
18 the U.S.?

19 A I don't think so.

20 Q Do you know who the individuals are that created Donkey  
21 Kong? Have you ever discussed that with your  
22 father-in-law, who are the actual creators of the game  
23 Donkey Kong?

24 A I believe it was made by Research and Development  
25 Department.

Q What's the name of it?

A Research and Development.

Q Of what company?

A Of Nintendo Company, Limited.

Q You don't know who the individuals are there, though?

A I know two or three people there.

Q What are their names?

A Mr. Uemura.

Q How do you spell that?

A U-e-m-u-r-a.

I met Mr. Takeda. T-a-k-e-d-a. And Mr. Yokoi.  
Y-o-k-o-i. And I met Mr. M-i-y-a-m-o-t-o. Miyamoto.

Q And it's your understanding that they are the creators of  
Donkey Kong?

A They are members of R & D.

Q You don't know what their contribution is, if anything, to  
Donkey Kong?

A I don't know.

Q What leads you to believe that the Research and  
Development organization of Nintendo Company, Limited  
created Donkey Kong, is this something somebody told you?

A I think so.

Q You don't recall the circumstances of that?

A When I visited Japan in the Spring of 1981, I visited R &  
D Department and I saw the game Donkey Kong, though it's

not completed yet.

Q These people were working on it?

A Yes.

Q Are those people presently employed by Nintendo Company, Limited, as far as you know?

A I believe so.

Q Any of them been to the U.S.?

A Mr. Takeda came to the U.S..

Q What was the purpose of this visit?

A We went to New York together.

Q And what was he here for?

A It's business. I don't like to discuss it.

Q Has he been here to help in any problems with the video games?

A No.

Q Has he been here as an engineer on any of them, in an engineering capacity?

A No.

Q When was this that he came here?

A I don't remember when it was exactly.

Q Are any of these four scheduled to come here in the near future?

A Mr. Takeda will come to Chicago.

Q When will he be in Chicago?

A Around November 10th.



Q What will he be doing in Chicago, is there a show there or something?

A Yes.

Q What's the show?

A AMOA Show.

Q Does he speak English?

A Yes.

Q What's his first name?

A I don't know.

Q How about any of the other three, any of those scheduled to come here?

A No.

Q What will Mr. Takeda's purpose be in coming?

A To attend the AMOA Show.

Q Is this a part of the support that Nintendo Company, Limited provides to Nintendo of America, Inc.; to send people occasionally?

A No.

Q This is something unusual?

A I think he wants to see the Show.

Q Do people from Nintendo Company, Limited often come to the U.S. to visit you?

A No.

MR. GIFFORD: Why don't we take a break.  
(Brief recess taken.)

1 MR. GIFFORD: Back on the record.

2 BY MR. GIFFORD:

3 Q The agreement whereby Nintendo Company, Limited assigned  
4 copyrights and trademarks to Nintendo of America, Inc.,  
5 was that a written agreement?

6 A Yes.

7 Q Did you bring copies of that today?

8 A No.

9 Q Does it call for any payment of royalties from Nintendo of  
10 America, Inc. to Nintendo Company, Limited?

11 A No.

12 Q Did it require any down payment?

13 A No.

14 Q Is there any money at all involved in that agreement?

15 A No.

16 Q Was this a negotiated agreement? Did you negotiate with  
17 your father-in-law about this agreement?

18 MR. SERRITELLA: Do you understand what he means  
19 by negotiate?

20 A I don't know.

21 MR. SERRITELLA: Perhaps you could clarify.

22 BY MR. GIFFORD:

23 Q Was there any discussion regarding this agreement or was  
24 it just presented to you as something to you that came  
25 from Nintendo Company, Limited?

1 A Yes. There was discussion.

2 Q Okay. What was the nature of the discussions?

3 A As far as we sell Nintendo's product in the United States  
4 and Canada, we must have copyright and trademark.

5 Q This discussion, where did it take place?

6 A Where?

7 Q Um-hmm.

8 A I don't remember.

9 Q Do you know who was there?

10 A Pardon?

11 Q Was it just you and father-in-law or were other people  
12 there?

13 A I don't remember.

14 Q Was this a part of the discussion when your father-in-law  
15 talked to you about forming the company?

16 A No.

17 Q This was afterwards?

18 A Yes.

19 Q Do you know where Falcon Company, Limited is located?

20 A I believe it's in Tokyo. I'm not sure.

21 Q Do you know who any of the principals of that company are?

22 A No.

23 Q Are any of the principals related to any Officers of  
24 Nintendo Company, Limited?

25 A I don't know.

1 Q None of them are related to you?

2 A No.

3 Q The agreement, if you will look at it, I think calls for  
4 the agreement between Falcon and Nintendo Company,  
5 Limited, calls for a royalty payment of ten thousand yen  
6 is that correct?

7 A Yes.

8 Q Approximately what is that in U.S. dollars?

9 MR. DONOHUE: Today or that the time it was  
10 written?

11 MR. GIFFORD: Today.

12 A Around -- right now around forty dollars. Supposing a  
13 dollars equals to two hundred fifty yen.

14 Q It's close to that. Between forty and fifty dollars,  
15 something like that?

16 A I think it's about two sixty right now.

17 Q Okay. Do you know whether Nintendo Company, Limited has  
18 entered into a license agreement regarding Donkey Kong  
19 game with anybody -- any company other than Falcon?

20 A Yes.

21 Q Who else?

22 A Taito.

23 Q How do you spell that?

24 A T-a-i-t-o.

25 Q T-i-a?

A No. T-a-i-t-o.

Q Got it.

A Sega; S-e-g-a. NAMCO; N-A-M-C-O.

Q Let's take Taito first. Where are they located?

A I believe in Tokyo.

Q And what do they do for -- what's their business?

A They manufacture coin-operated video games.

Q And what was the nature of the agreement between Nintendo Company, Limited and Taito?

A I don't know very well.

Q How did you become aware that there was an agreement?

A I think we asked for the information to Nintendo Company, Limited, who are the licensees of Donkey Kong games in Japan.

Q Is it your understanding then that they're just licensed in Japan; Taito?

A Yes.

Q Can they sell in the U.S.?

A No.

Q Can they sell for somebody in Japan who in turn sells it in the U.S.?

A No.

Q Does their agreement prevent them from doing that?

A I didn't see the agreement.

Q Okay. Is it your understanding that it prevents them from



doing that?

A Yes.

Q Is it your understanding that the agreement with Falcon prevents Falcon from selling to someone in Japan who would in turn sell it in the U.S.?

MR. DONOHUE: Is his understanding at all relevant here?

MR. GIFFORD: Oh, yeah, it's relevant. What was the question?

(Record repeated.)

MR. GIFFORD: His understanding may or may not be relevant, but I'm interested in what his position is.

A I don't know where about the -- how to understand the agreement. But agreement is here, so I want you to read it.

Q All right. Would you translate Article Eleven, paragraph four for me?

A To disclose the -- to disclose to the third party about this agreement.

Q Is it your understanding that that means that they, which is Falcon, was prohibited from telling anybody about the contents of the agreement?

A Yes.

Q Would you translate Article Eleven, paragraph one for me?

A To import or export the games similar or identical to



Donkey Kong or Crazy Kong.

Q Do you know who did this translation, Defendant's Exhibit D-3?

A D-3 means this?

Q This. The English version of this.

A I think they hired the outside translator.

Q By "they" you mean Nintendo Company, Limited?

A Yes.

Q This was provided to you along with the Japanese version of it?

A Yes.

Q Would you have any difficulty -- did you have any difficulty in obtaining this agreement from Nintendo Company, Limited, a copy of it?

A You mean English or Japanese?

Q Both.

A No.

Q You just told them you wanted it and they just sent you a copy?

A Yes.

Q Would you have any trouble obtaining a copy of the Taito agreement, or the Sega agreement, or the NAMCO agreement?

A We didn't request.

Q If you requested it do you anticipate you would have any trouble obtaining it?



A No.

Q Is that true of any documents?

A Pardon?

Q Is that true of any documents that Nintendo Company, Limited might have that you might find a use for, is your relationship such that you could just request it and most likely get it?

A I don't know.

Q Have you had any difficulty ever in obtaining any documents that you requested from them?

A Yes.

Q What documents?

A It was the source listing of Donkey Kong game.

Q They wouldn't provide you with that?

A No.

Q Did they give you a reason?

A It was the secret of Nintendo Company, Limited.

Q Did you request that in writing?

A No.

Q Was it a refusal made in writing?

A No -- oh, I don't remember whether we did it in writing or not.

Q If you did, would you have a copy of it?

A If we did it, yes.

Q Do you have a file that you keep such things in?



A Yes.

Q Do you have a label on that file?

A Label?

Q Do you call it something? Is it the license file, is it the source listing file, does it have any name at all?

A I don't know where -- which file we put it in.

Q Tell me about the agreement -- about what you know about the agreement between Nintendo Company, Limited and Sega.

A I don't know it.

Q Is it your understanding that it's a license agreement as well?

A Yes.

Q And Sega is a Japanese company?

A Yes.

Q Manufactures video games?

A Yes.

Q Exports video games?

A I don't -- I don't know about that.

Q You haven't seen any of Sega's games in the U.S.?

A Yes, I do. But I believe they are manufactured in the States by a different company.

Q Does Sega have a U.S. company?

A I think it's -- oh, it's a U.S. company.

Q It is a U.S. company?

A (Nodding affirmatively.)



Q Where is it located?

A California, I believe.

Q And do they have a Japanese subsidiary or something?

A Yes.

Q Where are they located?

A In Japan.

Q Do you know where?

A No.

Q How about NAMCO, do you know anything about the license agreement between Nintendo and NAMCO?

A No.

Q NAMCO is a Japanese company?

A Yes.

Q Manufactures video games?

A Yes.

Q Is it your understanding that the license agreement related to the manufacture of video games?

A Yes.

Q And the Donkey Kong game in particular?

A Yes.

Q Has Nintendo of America, Inc. ever entered into a license agreement relating to the Donkey Kong game?

MR. DONOHUE: Excuse me. Go ahead.

BY MR. GIFFORD:

Q With whom?

A We've licensed to about forty companies.

Q In the U.S.?

A Yes.

Q Are these video game manufacturers?

A No.

Q What kind of manufacturers are they?

A T-shirts, pajamas, games, I mean, toys.

Q Do you have a standard license that you provide --

A Yes.

Q -- and when somebody asks for it?

Did you bring a copy of that license with you today?

A No.

Q Do you have any objections to us seeing a copy of one of those licenses?

A If you can keep it secret.

Q If it's your standard license, is there any need to keep it secret?

A Yes.

MR. DONOHUE: Can we go off the record for a minute?

(Brief discussion held off the record.)

MR. DONOHUE: Why don't we go back on the record.

Counsel, we have objected to it for business confidentiality reasons; objected to turning over the

actual licenses themselves. What we will turn over, and what we have brought today, is a list of all the licensees. But we would object to turning over the actual license agreement.

MR. GIFFORD: It's my understanding from Mr. Arakawa that you have a standard license.

BY MR. GIFFORD:

Q If I were going to manufacture T-shirts, I would write to you and wouldn't I get a standard license?

A Standard form.

Q Yes.

A We have.

MR. GIFFORD: You don't have any objection to me seeing that, certainly.

MR. DONOHUE: An unexecuted form?

A If you can keep it secret.

MR. GIFFORD: I'm not sure I have to keep it secret.

BY MR. GIFFORD:

Q It's something that you provide anybody that inquires, is it not?

A No.

Q If I wanted to take a license under your -- to manufacture t-shirts using your Donkey Kong trademark, you would refuse to show me your standard license?

A Yes.

Q You would. How would you get a licensee? How would you get somebody to sign an agreement that you're not going to show them?

A After we agreed on all terms and conditions, we provide standard form to them.

Q You have a standard form that you fill in the blanks?

A Yes.

Q You have objections to me seeing the agreement without the blanks filled in?

A If you can keep it secret.

Q I'm not going to agree to keep it secret.

MR. GIFFORD: Counsel, can I see this thing or do we have to go and have a magistrate say it? I'm entitled to see that for sure.

MR. DONOHUE: I think that for the time being we will resist turning it over. Subsequent to this deposition -- I don't have one with me anyway.

MR. GIFFORD: Okay.

MR. DONOHUE: Subsequent to the deposition I will talk to Mr. Arakawa, and if his position has changed I'll notify you and get one to you.

MR. GIFFORD: Okay.

BY MR. GIFFORD:

Q My understanding, the agreements we've been talking about

to up to now are agreements with between U.S. companies and Nintendo America, Inc. relating to things other than video games, is that correct?

A Yes.

Q Do you have any licensees of the Donkey Kong video game in the U.S.?

A I don't understand your question.

Q Has Nintendo of America, Inc. licensed anybody in the U.S. to manufacture or -- and/or sell Donkey Kong video games?

A No.

Q Are you familiar with a company known as Ikegami Company, Limited in Tokyo? I-k-e-g-a-m-i.

A Yes.

Q Tell me about that company, who are they?

A I don't know very well about the company.

Q Tell me what you know. What do they do?

A I believe Ikegami and Nintendo work together.

Q Same company?

A Pardon?

Q You mean the same company? When you say together, do you mean same company or --

A No. Different company.

Q They work together?

A Yes.

Q Did they jointly develop Donkey Kong?

MR. DONOHUE: What do you mean by jointly develop?

MR. GIFFORD: Work together.

BY MR. GIFFORD:

Q Did they work together on Donkey Kong?

A Yes.

Q What did they do in working together on Donkey Kong?

A I believe Ikegami assisted Nintendo Company, Limited to make the hardware of Donkey Kong game.

Q Did they do any of the programming of it, of the game?

A Programming?

Q Yes.

A Yes.

Q Did they do programming of the game?

MR. DONOHUE: Let's me interpose a foundation objection here. But he can answer if you know.

A I don't know what do you mean by programming of the game.

Q Did they have any part in coming up with the actual program that produces the game?

A I don't know.

Q Do you know what their contribution was at all?

A Contribution?

Q What they contributed to the development of the game. You indicated they worked jointly together and I'm trying to find out what it is they did.

A I have just explained it to you. They assisted Nintendo Company, Limited to make the hardware of Donkey Kong game.

Q Okay. Who's Nintendo Leisure System Company?

A I believe it's Japanese company between Nintendo Company, Limited and Toppan.

Q And who?

A Toppan. T-o-p-p-a-n.

Q And who is Toppan?

A It's a large printing company in Japan.

Q Nintendo Leisure System Company is mentioned in the agreement between Falcon and Nintendo Company, Limited, is that correct?

A Yes.

Q What does that company do, other than collect royalties under that agreement; anything?

A I believe they buy games from Nintendo Company, Limited and sell to distributors in Japan.

Q In Japan?

A In Japan.

Q Do they sell anywhere else other than in Japan?

A I don't know.

Q Do you know whether or not Ikegami Company has assigned any copyrights to Nintendo of America, Inc.?

A I don't know.

Q You are Nintendo of America, Inc., have they assigned any



to you? You're the President of Nintendo American, Inc., has Ikegami assigned any copyrights to you?

A No.

Q To your company?

A No.

Q And I assume the answer that you don't know is the answer to the next question also.

Have they assigned any to Nintendo Company, Limited of Japan?

A I don't know.

Q Does Nintendo sell circuit boards or ROMS for Donkey Kong games separate from any other parts of the game?

A I beg your pardon?

Q Does Nintendo of America, Inc. sell either circuit boards or ROMS for Donkey Kong game machines separately from the cabinetry, the controls, the TV screen, and the other parts that make up the game?

A When our distributors order PC boards for the repairs that they make.

Q If I want to make my own game, I can't buy the circuit boards or ROMS from you, is that correct?

A We sell only to our distributors.

Q Do you prohibit your distributors from re-selling them; PC boards and ROMS?

A No, we don't prohibit.

1 Q You don't prohibit them from selling --

2 A No.

3 Q -- re-selling them?

4 So they can sell them?

5 A They can.

6 Q What would be your position with respect to somebody who  
7 buys a circuit -- a PC board or ROMS, and/or ROMS for the  
8 Donkey Kong game from a distributor of yours and produced  
9 his own game from what he bought, would you object to  
10 that?

11 A Yes.

12 Q Would you bring a legal action on that?

13 A I think so.

14 Q Have you done so?

15 A No.

16 Q You do not actually license your copyright then on the  
17 game to people who want to take a license, is that  
18 correct?

19 A I beg your pardon?

20 Q You have no program whereby you would license somebody  
21 under your copyright, other than purchasers of the  
22 completed game, is that correct?

23 A I don't understand the question.

24 Q Let me try it again.

25 Nintendo of America, Inc. would not license a

1 manufacturer under its copyright for Donkey Kong to  
2 produce its own game, is that correct?

3 A I still don't understand.

4 Q Well, let me see if I can come back at it from a different  
5 way.

6 Would Nintendo Company, Limited license a  
7 manufacturer under its copyrights to produce the Donkey  
8 Kong game in the U.S.?

9 MR. DONOHUE: Object. And I object to the form  
0 of the question in that you stated Nintendo Company,  
1 Limited. I assume you're referring to Nintendo of  
2 America.

3 MR. GIFFORD: I'm sorry. I mean Nintendo of  
4 America, Inc.

5 Q Would Nintendo of America, Inc. license a manufacturer in  
6 the U.S. under its copyrights to produce a -- the Donkey  
7 Kong game in this country?

8 A I don't think so.

9 Q You have not up to now, is that correct?

10 A That's correct.

11 Q And the only way that anybody can obtain a license under  
12 Nintendo of America's copyrights is to actually buy a  
13 complete game from Nintendo of America, Inc. or its  
14 distributors, is that correct?

15 A I beg your pardon?

MR. GIFFORD: Read that back again, because that's a hard one to get it right again.

(Record repeated.)

A We sell games, complete games.

Q And those games carry with it the rights under your copyright to use the games, is that correct?

A I don't know.

Q What do your copyrights do for you? What rights do you acquire by obtaining U.S. copyrights, do you know?

A I beg your pardon?

Q What rights do you obtain by securing U.S. copyrights?

A Copyright.

Q What does that mean, what's that the right to do?

MR. DONOHUE: Why is his understanding of the legal conclusion important or relevant?

MR. GIFFORD: It's relevant and it's likely to lead to relevant evidence, which is really the test of a discovery proceeding whether -- rather than it's relevant. And I'm trying to find out what the corporate policy is with regards to the copyrights, and we're exploring that. And in order to find out what his policy is, we've got to figure out what it is he knows about copyrights so that we can determine whether the policy is consistent with what he knows.

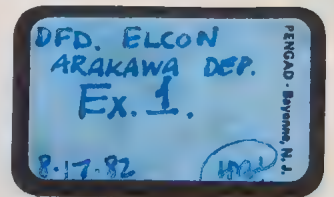
A I think copyright we registered is the audio-visual work



FALCON CO., LTD.

October 7, 1981

To: ARTIC INTERNATIONAL INC.  
550 Route 22  
Bridgewater, N.J. 08807



We certify that FALCON CO., LTD has manufactured the PC Board "CRAZY KONG", under the approval of Nintendo Co., Ltd., 1-22 Kanda Sudacho, Chiyoda-ku, Tokyo, Japan, with an issuance of the formal license seal of Nintendo, and further certify that 200 sets have been sold to ARTIC INTERNATIONAL INC.

We hereby state that all the computer programs and hard wares of the "CRAZY KONG" Video Game PC Board were developed by FALCON CO., LTD. itself.

Those computer programs and hard wares are completely different from the computer programs and hard wares of the "DONKEY KONG" which are produced by NINTENDO CO., LTD.

HARUO INOUE  
President  
FALCON CO., LTD.

*Haruo Inoue*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

NINTENDO OF AMERICA, INC.,

Plaintiff,

v.

THE HONORABLE

Civil Action No.

ELCON INDUSTRIES, INC.,  
et al.,

Defendants.

---

AFFIDAVIT OF MICHAEL DODSON

STATE OF MICHIGAN     )  
                              ) SS.  
COUNTY OF SABELLA    )

Michael Dodson, being first duly sworn upon his  
oath, states:

1. I have personal knowledge of the facts stated  
in this Affidavit.

2. Until May 14, 1982, I was Sales and Service  
Manager of Dolphin Coin Incorporated, 4353 South Isabella  
Road, Mount Pleasant, Michigan. I had been employed by  
Dolphin for approximately six years. In my capacity as  
Sales and Service Manager, I purchased coin-operated  
electronic video games for Dolphin and performed service and  
repair work on games owned by Dolphin and placed in various  
locations in Michigan.

3. In my work, I became familiar with the  
Nintendo of America, Inc. ("Nintendo") DONKEY KONG video  
game.

4. The video game DONKEY KONG has the theme of a fanciful gorilla image perched at the top of a building structure where a lady figure is held captive. A man figure (called Jump Man) attempts to scale the building structure and in doing so he must dodge various hazards and objects thrown or launched by the gorilla figure from the top of the building structure. Prior to the insertion of a coin, an attract mode, which plays continuously and automatically in repeating sequence, displays the name of the game DONKEY KONG, the copyright notice of Nintendo, and other information and instructions concerning the game. It includes a brief segment of simulated play mode showing the gorilla figure, building structure, the lady and man figures and the hazards and obstacles encountered by the man figure. After insertion of a coin and during the play mode, movement of the man figure is partly under the control of the game player who uses a control stick and a pushbutton switch to guide the man figure up the building structure, and to avoid the mentioned hazards and obstacles. Musical and other unique sound effects accompany the video presentation.

5. In my capacity as Sales and Service Manager of Dolphin, I became aware of the problem of "copying" of coin-operated video games. Games substantially identical in appearance and play to games manufactured by arcade game manufacturers have started to appear throughout Michigan. It came to my attention that the defendants in this action, Elcon Industries and Andre R. Dubel, were assembling and selling copies of several video games. One of these copies is substantially identical to Nintendo's DONKEY KONG.

6. About one and a half years ago, I met one of the defendants in this action, Andre R. Dubel. I spoke with him at a booth operated by him for Elcon Industries during an amusement exposition in Chicago, Illinois. At that time, I spoke with him about the possibility of my purchasing coin-operated video games from him. I had heard that Dubel sold games. I left my business card at his booth during the show, and he promised to telephone me. He did telephone me, but as a result of our conversation, I concluded that he was not making any games I was interested in.

7. I next saw and spoke with Andre Dubel at the Amusement Operators Exposition held in Chicago, Illinois, in March of 1982. Dubel was at a booth labeled "Elcon Industries." I again discussed with him my interest in purchasing video games. Dubel said that he would telephone me and let me know the prices of the various games he offered. He stated that he would sell individual video game circuit boards if that is what I wanted.

8. When Dubel did not telephone me after the exposition, I telephoned him. On April 6, 1982, I dialed the Elcon Industries number on his business card and asked for Andre Dubel. The speaker identified himself as Dubel. Over the telephone, Dubel stated his prices for various video game circuit boards. Among others, he said he would sell CRAZY KONG circuit boards for \$650.00.

9. At the conclusion of our April 6 telephone conversation, I arranged with Dubel to visit his offices at Elcon Industries, 2715 Nakota Road, Royal Oak, Michigan to



see the various boards and video games which he had for sale. I was to visit Elcon on Friday, April 9, 1982. When I realized that it would be impossible for me to travel to Royal Oak, Michigan on April 9, I telephoned and told him that I would be unable to visit Elcon on that day.

Mr. Dubel said that I could stop by on any of several days during the week of April 12, 1982.

10. On Thursday, April 15, 1982, I visited Elcon Industries in Royal Oak, Michigan. The Elcon building is a big warehouse with a small section of offices. The main part of the warehouse was a big, open bay in which I saw from one hundred twenty to one hundred thirty upright video games and from thirty to forty cocktail table video games. I also saw an area in which there were printed marquee labels, including one for CRAZY KONG. When I entered the building where the games were contained, one of the Elcon employees came up to me and began to discuss the various games with me. Another employee came up and told him to stop talking with me. Shortly after that, a man who introduced himself as Don Suwinski came up to me and asked how he could help me. I told him that I was interested in looking at various video game boards because I hoped eventually to make my own video games. I identified myself and stated that I worked at Dolphin. I told Suwinski that I would be making the games on my own. Suwinski gave me the free run of the plant and I was allowed to look anywhere and at anything that I desired. I walked and looked throughout the building where the games and boards were contained. I noted that the upright games and the cocktail table games in

the room were in various labeled cabinets. The cabinets, not Nintendo cabinets, were made of laminated pressboard and were covered with a wood grain lamination.

11. During my inspection, I saw video games with marquee labels saying CRAZY KONG. These games had an attract mode with the words "Crazy Kong" on it. The instructions with each game were substantially similar to those which accompany a Nintendo DONKEY KONG game. The Nintendo copyright symbol was not shown on any of the games labeled CRAZY KONG. I was told by Dubel that these games were for sale for \$2,100.00 each.

12. I entered a separate "board room" in the Elcon building which contained from four hundred to five hundred circuit boards. I was allowed to pick up and examine boards from the shelves in the board room.

13. As I looked throughout the Elcon warehouse, Don Suwinski offered to sell me a CRAZY KONG circuit board. I told Suwinski that the board was very similar to DONKEY KONG and Suwinski agreed. I took a board off the shelf and tested it. I told Suwinski that I would buy the CRAZY KONG circuit board for \$650.00 and did so.

14. I paid Don Suwinski \$650.00 in cash for the CRAZY KONG circuit board. I also bought several other circuit boards. I was given a receipt by Suwinski. A true and correct copy of the receipt given to me by Suwinski is attached as Exhibit A to this Affidavit. When he prepared the receipt attached as Exhibit A, Suwinski wrote on the receipt that he had sold me a "Crazy Logic". The item identified as "Crazy Logic" was the same item I described above in paragraph 13.

15. As I looked at the receipt, Andre Dubel entered the room in which we stood and walked up to us. Dubel told me there was some question about the copyright on DONKEY KONG. He told me about an incident on the west coast in which he said that Nintendo had to post bond in order to confiscate CRAZY KONG games. Dubel further stated that Nintendo had forfeited the bond because CRAZY KONG did not infringe on Nintendo's copyright.


16. I asked Dubel if he needed a salesman for the northern district. He responded that he would sell to me completed games, except for the logic boards, for \$1,200.00 each. He told me that I could then sell or place the games. He stated that he would sell the logic boards to be placed in the games for \$300.00 -- \$1,500.00, and that I could install and adjust them.

17. I telephoned Andre Dubel at Elcon Industries again on the morning of Saturday, April 17, 1982 to let him know that he had forgotten to send me schematics on another board I purchased on April 15. He promised to send the items to me and has done so.

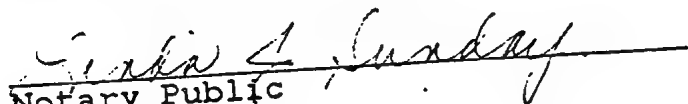
18. Andre Dubel appeared to be in charge of the Elcon offices where I purchased the various circuit boards. When I noticed something in the offices which stated that Elcon was a subsidiary of Micron of Arizona, Don Suwinski replied that that was true, but that "Dubel owns Micron anyway."

19. The circuit boards and game I purchased on April 15 were taken by me to David Hobbs of Empire Distributing, Inc. of Grand Rapids, Michigan. Mr. Hobbs and I marked each board and game with identifying markings. These items are now stored in Grand Rapids, Michigan. During the time these boards and games were in my possession, I did not alter them in any manner except for placing the identifying markings on them.

This Affidavit has been executed at Detroit, Michigan, this 3 day of June, 1982.

  
Michael Dodson, Affiant

Subscribed and sworn to before me  
this 3rd day of June, 1982

  
Notary Public

LINDA J. SUNDAY  
Notary Public, Wayne County, Michigan  
My Commission Expires October 17, 1982

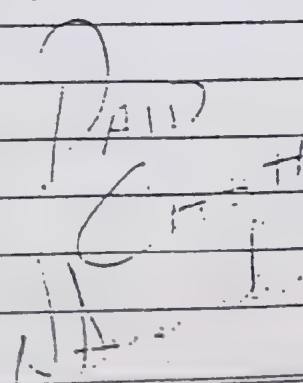
Acting in Sabella County

ORDER NO. \_\_\_\_\_

TO MIKE DODSON DATE 11-1-82 YADDRESS RT 1 Blanchard 49310

SHIP TO. \_\_\_\_\_

ADDRESS \_\_\_\_\_

SALESMAN	SHIP VIA	WHEN	TERMS	F. O. B.
Don	C/Pu			
1	MAYDAY	Logic		450.00
1	CRUSH	Roller- Logic		600.00
1	ASTRO	Combat II Logic		450.00
1	GLAXIAN	Logic		450.00
1	CRASH	Logic		650.00
1	CRASH	C-Trail		1400.00
				4000.00
TAX				160.00
				4160.00
<div style="text-align: center;">  </div>				
PURCHASED BY <u>Mike Dodson</u>				



GRAYLINE FORMS 54058 PAPER PATENTED BY HCB CO

1177 USA



NINTENDO LICENSEES

Andover Togs  
1 Penn Plaza  
New York, New York 10119

BGO Records  
3297 Northcrest Road, Suite 203  
Doraville, Georgia 30340

Bates Nitewear  
P. O. Box 21648  
Greensboro, North Carolina 27420

Beautex Mfg.  
27 West 20th  
New York, New York 10011

Charleston Hosiery  
105 West 55th Street  
New York, New York 10019

Coleco  
945 Asylum Avenue  
Hartford, Connecticut 06105

H.H. Cutler  
120 Ionia Avenue S.W.  
P. O. Box 2488  
Grand Rapids, Michigan 49501

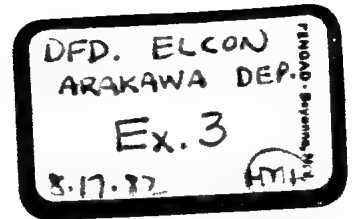
Deka Plastics  
914 Westfield Avenue  
Elizabeth, New Jersey 07208

Etone Int'l  
112 Bay Street  
Jersey City, New Jersey 07302

Factors, Etc., Inc.  
Geissler Park  
Bear, Delaware 19701

Hollander Home Fashions  
350 Central Avenue  
Newark New Jersey 07103

HOUZE GLASS  
P. O. Box 307  
PT. Marion, Pennsylvania 15474



Joy Insignia, Inc.  
P. O. Box 68  
320 - 68th Street  
Guttenberg, New Jersey 07093

Milton Bradley  
1500 Main Street  
Springfield, Maryland 01115

Parker Brothers  
50 Dunham Road  
Beverly, Maryland 01915

Plymouth, Inc.  
Box 308 Benigno Boulevard  
Bellmawr, New Jersey 08031

Roadapple Sportswear  
27 West 20th Street  
New York, New York 10011

Thermo-Serv  
6th & Grant  
Anoka, Minnesota 55303

Trimline  
142 West 36th Street  
New York, New York 10018

The Wiz Kids  
161 Eversest Drive  
North Huntingdon, Pennsylvania 15642

Wormser Co.  
1535 Lake Cook Road, Suite 402  
Northbrook, Illinois 60062

Franco Manuf  
309 5th Avenue  
New York, New York 10016

Synergistics  
650 6th Avenue  
New York, New York 10011

Bellstone Trading  
49 West 23rd Street  
New York, New York 10010

P & K Products  
640 Church Road  
Elgin Oaks Industrial Park  
Elgin, Illinois 60120

Manton Cork  
355 Crooked Hill Road  
Brentwood, New York 11717

Video Babies  
145 Country Ridge Drive, Suite 100  
Pt. Chester, New York 10573

Gindi International  
6 Hollywood Coart  
S. Plains, New Jersey 07080

R.G.A.  
4 West 33rd Street  
New York, New York 10001

Fleer Corp.  
10th & Somerville Streets  
Philadelphia, Pennsylvania 19141

Lasting Impressions  
875 Waverly Street  
Framington, Maryland 01701

Modern Promotions  
155 East 55th Street  
New York, New York 10022

I.J.E. Distributing  
450 North Park Road  
Hollywood, Florida 33021

Super Shirts  
15235 N.E. 95th  
Redmond, Washington 98033

Topps Chewing Gum, Inc.  
254 36th Street  
Brooklyn, New York 11232

Colorforms  
133 Williams Drive  
Ramsey, New Jersey 07466

such information, applicant hired an investigator to visit the business location of un



Superior Toy  
3417 North Halsted Street  
Chicago, Illinois 60657

South Diamond Associates, Inc.  
7855 Gross Point Road  
Skokie, Illinois 60077

Fleetwood  
50 Carnation Avenue  
Floral Park, New York 10001

A.J. Renzi Plastic Corp.  
180 Pond Street  
Leominster, Massachusetts 01453

such information, applicant hired an investigator to visit the business location of "Sno."

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

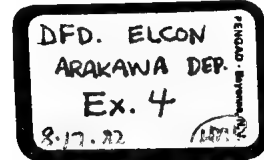
Applicant: Nintendo of America, Inc.

Attorney Docket No: NOAM-2-0819

Serial No: 330,932

Filed: October 5, 1981

Mark: DONKEY KONG & Design



SUPPLEMENTAL PETITION TO MAKE  
APPLICATION SPECIAL

Seattle, Washington 98121

March 11, 1982

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Previously, the undersigned applicant petitioned the Commissioner under 37 CFR 2.146 to designate the above-identified pending application as "special" and to advance it out of the normal order of examination in accordance with TMEP 1102.04. That petition was received in the Patent and Trademark Office on November 2, 1981, and in a response thereto the Director of Trademark Examining Operations, Herbert C. Wamsley, in a letter dated January 27, 1982, denied the petition on the grounds that mere anticipation of infringement of the trademark was an insufficient basis for granting special status to the application.

The undersigned applicant now comes forth to supplement the original petition filed November 2, 1981, with evidence of actual infringements as set forth below. The following supplemental proof is to be considered together with the declarations made by the undersigned applicant and petitioner in the above-mentioned original petition filed November 2, 1981.

Therefore, in support of this supplemental petition, applicant and petitioner state:

1) That on or about October 20, 1981, an employee of the undersigned applicant received information from one of the applicant's distributors in California that an infringing audio-visual game, bearing the trademark DONKEY KONG was being offered for sale through an arcade called "Space World" in Gilroy, California; that as a result of such information, applicant hired an investigator to visit the business location of "Space

1 World" and as a result of that investigator's effort, certain photographs and other  
2 evidence of infringement, including trademark infringement of the name DONKEY KONG  
3 was obtained, which evidence is in the possession of the attorneys of record, Christensen,  
4 O'Connor, Johnson & Kindness, of Seattle, Washington, for the undersigned applicant,  
5 under an attorney's file marked NOAM 5 1222; applicant refrains from submitting this  
6 evidence to the Trademark Office for the reason that the infringer is a potential  
7 defendant in litigation that may be brought by the undersigned applicant and as such the  
8 evidence is considered confidential.

9           2) That prior to September 1981, applicant received information through  
10 its employees that a video game operator d/b/a Fantasy Amusements, Inc. of Renton,  
11 Washington, was making infringing audio-visual games bearing the DONKEY KONG  
12 trademark; as a result of that information, the undersigned applicant, acting through its  
13 attorneys, Christensen, O'Connor, Johnson & Kindness, of Seattle, Washington,  
14 investigated those reports and uncovered proof of such infringement whereupon an action  
15 to restrain such infringement was brought in the United States District Court for the  
16 Western District of Washington under Civil Action No. C81-1278M; this litigation was  
17 subsequently resolved in the form of a Consent Judgment, Decree, and Permanent  
18 Injunction against the defendant, Fantasy Amusements, Inc. and the principals thereof,  
19 which was entered by the Court Clerk on January 18, 1982.

20           3) That information was developed during the proceedings against  
21 Fantasy Amusement, Inc. in Civil Action No. C81-1278M, which led to the investigation of  
22 activities of still another party that was engaged in infringement of applicant's trademark  
23 DONKEY KONG for audio-visual games; that such other party was doing business under  
24 the name of Weilco, Inc. of Seattle, Washington, Ron Weil, principal; that pursuant to  
25 extra judicial discussions with Weilco, Inc. and Ron Weil, an out-of-court settlement was  
26 reached in which Weilco, Inc. and Ron Weil agreed to cease infringing use of the name  
27 DONKEY KONG for audio-visual games and further agreed to hand over labels and name  
28 plates bearing the infringing trademark, however it is not known whether all infringing  
29 labels were recovered.

30 --

1           4)     That prior to December 1978, applicant received information that an  
2 audio-visual game that was similar to or the same as applicant's copyrighted game sold  
3 under the trademark DONKEY KONG was being marketed under the name CRAZY KONG;  
4 as a result of such information an investigation conducted by agents of applicant  
5 uncovered evidence of infringement and based thereon applicant brought suit in the  
6 United States District Court for the Central District of California against Chris Anderson  
7 and others in Civil Action No. CV81-6359-RMT(TX) in a Complaint filed on December 17,  
8 1981; that this civil action is still pending and that the Court has granted a Preliminary  
9 Injunction against certain of the named defendants on the basis of Findings of Fact dated  
10 and signed February 12, 1982, by U.S. District Court Judge Robert M. Pakasugi, including  
11 Findings Nos. 34 and 35 which state:

12           34. The similarity between the nonfunctional design characteristics of  
13 defendants' CRAZY KONG counterfeit game and plaintiff's original  
14 DONKEY KONG is such that defendants' unauthorized games are taken to  
15 be from or approved by Nintendo by the consuming public.;

16           35. One of the selling points of defendants' infringing CRAZY KONG games  
17 is their similarity to the genuine DONKEY KONG game.;

18           that applicant submits that its asserted trademark right in the name DONKEY KONG  
19 when considered in the light of the activities of defendants Anderson and others as set  
20 forth in the Findings of Fact and Conclusions of Law in the aforementioned civil action  
21 creates likelihood of confusion between the names DONKEY KONG and CRAZY KONG.

22           5)     That applicant is aware of at least ten other specific reports of  
23 infringement of its audio-visual game sold under the trademark DONKEY KONG, which  
24 infringing games use either an identical or a confusingly similar name, including the  
25 above-mentioned CRAZY KONG, and such variations thereof as KING KONG and  
26 DONKEY KING.

27           That, in summary, the undersigned applicant and petitioner herein has now  
28 submitted evidence of actual infringement of its trademark rights and since this omission  
29 was apparently the only basis for the denial of the petition to make special,  
30 reconsideration of the petition, supplemented by the above evidence, is requested and  
early granting of the petition is in order.

1 Minoru Arakawa states that he is the President of Nintendo of America Inc.,  
2 applicant and petitioner herein, and is authorized to execute this petition on behalf of said  
3 corporation; that all statements made herein of his own knowledge are true and that all  
4 statements made on information and belief are believed to be true; and further, that these  
5 statements were made with the knowledge that willful false statements and the like so  
6 made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of  
7 United States Code, and that such willful false statements may jeopardize the validity of  
8 the above-identified application or any registration resulting therefrom.

9 NINTENDO OF AMERICA INC.

10  
11 Date MARCH 17, 1982

By Minoru Arakawa

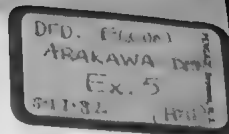
12 Minoru Arakawa, President  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30



Consumer and  
Corporate Affairs Canada

Consommation  
et Corporations Canada

APPLICATION FOR REGISTRATION OF COPYRIGHT IN A PUBLISHED WORK  
FORM 9



I, (we) Nintendo of America Inc.  
(Here insert full name and full address of proprietor(s))  
18340 Southcenter Parkway  
Seattle, Washington . 98188, U.S.A.

hereby declare that I am (we are) the owner(s) of the Copyright in the original

literary and artistic (audio-visual amusement game) work  
(Here insert: literary, dramatic, musical or artistic, as the case may be)

entitled DONKEY KONG  
(Here insert title only (no descriptive matter))

by Mr. Gunpei Yokoi  
(Here insert full name and full address of author(s))  
60 Fukuine Kamitakamatsu-cho  
Higashiyama-ku  
Kyoto, JAPAN

and that the said work was first published by the issue of copies thereof to the public on the

Ninth day of July 19 81  
(month)

in the Tokyo of Japan  
(city, town) (province, state, country)

and I (we) hereby request you to register the Copyright of the said work in my (our) name(s) in accordance with the provisions of the Copyright Act.

I (We) forward herewith the fee of \$25.00 for the examination, registration and issue of a certificate of registration of copyright

Dated at Seattle this 6th day of April 19 81  
(city, town) (month)  
Alison Chisholm  
Signature(s) (See Rule 33)

The Commissioner of Patent  
The Copyright Office,  
Ottawa-Hull, Canada  
K1A 0C9

STATE OF NEW YORK )

COUNTY OF \_\_\_\_\_ )

ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of New York, duly commissioned and sworn, personally appeared BARNEY KANE, to me known to be the \_\_\_\_\_ of BARNEY KANE, INC., the corporate Agent that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporate Agent, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the State of  
New York residing at \_\_\_\_\_

STATE OF WASHINGTON )

COUNTY OF KING )

ss.

On this 30th day of DECEMBER, 1981, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared MINORU ARAKAWA, to me known to be the PRESIDENT of NINTENDO OF AMERICA, INC., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

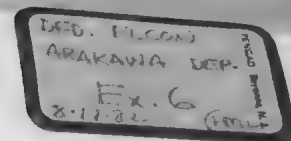
Thomas D. Pice, Jr.  
Notary Public in and for the State  
of Washington residing at SEATTLE

LS



EXHIBIT A





# CONFIRMATION OF COPYRIGHT ASSIGNMENT

NINTENDO CO., LTD., a corporation of Japan, having its principal place of business at 60 Fukuine, Kamitakamatsu-cho, Higashiyama-ku, Kyoto, Japan, is the original author in and of a certain amusement game known as DONKEY KONG, which was first published in Japan on July 9, 1981, and has assigned and does hereby confirm its assignment of the entire right, title and interest in common law and statutory copyright in the certain amusement game DONKEY KONG in the United States and the Western Hemisphere including Canada to NINTENDO OF AMERICA INC., a corporation of the state of New York, United States of America, with offices at 18340 Southcenter Parkway, Seattle, WA 98188.

NINTENDO CO., LTD.

Date MAR. 15, 1982

By Kiyoshi Yamashita  
Title: President

Subscribed and sworn to before me this 15 th day of March, 1982.

Copyright Office  
of the  
United States  
THE LIBRARY OF CONGRESS

THIS IS TO CERTIFY  
THAT THE ATTACHED  
DOCUMENT WAS RE-  
CORDED IN THE COPY-  
RIGHT OFFICE ON THE  
DATE AND IN THE  
PLACE SHOWN BELOW.

THIS CERTIFICATE IS IS-  
SUED UNDER THE SEAL  
OF THE COPYRIGHT OF-  
FICE.

Date of Registration  
21 Apr 82  
1982

Page  
383-384  
Continuation A. Mar 1981 - 20 82



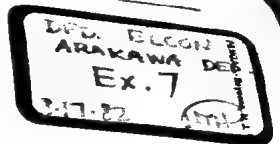
in and for

a  
i, Kyoto

Register of Copyrights  
and  
Assistant Librarian  
for  
Copyright Services

they have authority to transfer the rights to the illustration as  
provided herein and that no right to this illustration has been

AGREEMENT OF ORIGINAL TRANSFER OF WORK OF ART



AGREEMENT made this 9<sup>th</sup> day of January, 1982, by and between ~~BARNEY KANE, INC., 120 East 32nd Street, New York, New York 10016, (hereinafter "Agent"),~~ LESLIE CABARGA (hereinafter "Artist"); and NINTENDO OF AMERICA, INC., 18340 Southcenter Parkway, Seattle, Washington 98188 (hereinafter "Nintendo").

WHEREAS, LESLIE CABARGA has created a certain airbrush illustration depicting the Donkey Kong name and characters of the Donkey Kong video game, a copy of which illustration is attached hereto as Exhibit A; and

~~WHEREAS, BARNEY KANE, INC. is the authorized agent of LESLIE CABARGA with full power and right to transfer all rights to the illustration.~~

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereafter set forth and other valuable considerations, the parties hereto agree as follows:

1. Purchase and Sale. The ~~agent and the~~ artist, hereby sell to NINTENDO and NINTENDO hereby purchases the illustration, subject to the covenants herein set forth, for the agreed price of One Thousand Seven Hundred Fifty Dollars (\$1,750.00).

2. Rights Conveyed. By this agreement, NINTENDO hereby acquires all rights of every kind or nature to the illustration, and may use said illustration for whatever purposes it deems desirable, and has full rights to assign, transfer, license, register, or copyright the illustration with no further obligation to the artist ~~or the agent~~ than that provided herein.

3. Warranties. The ~~agent and~~ artist hereby warrant that they have authority to transfer the rights to the illustration as provided herein and that no right to this illustration has been

IN WITNESS WHEREOF, the parties have set their hands and seals to this agreement as of the day and year first above written.

~~BARNETT RANNEY, INC.~~

NINTENDO OF AMERICA, INC.

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS.

GIVEN under my hand and official seal this \_\_\_\_\_ day  
of \_\_\_\_\_, 198\_\_.

Notary Public in and for the State  
of \_\_\_\_\_ residing at \_\_\_\_\_

# MEMORANDUM

to: File

date: September 28, 1981

from: Marybeth Peters *mp*

vla

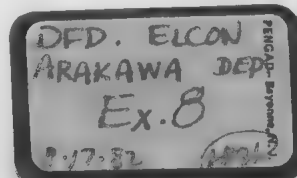
subject: Telephone conversation with Larry Jackson

At 3:14 p.m. I returned Mr. Jackson's telephone call. He said that he understood that there were some difficulties with the applications. I explained the problems. He authorized the Copyright Office to change the author of statement from "entire cinematographic work" to "entire audiovisual work."

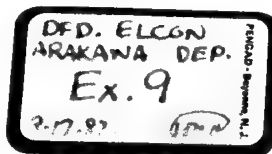
In discussing the videotape that was deposited (did it represent the work as first published in Japan?) it became known to me that there were two different versions and that the two applications were for these two different versions.

Mr. Jackson stated that the work was first published in Japan on July 9th. The videotape represents the work as first published.

The ADACDABCD version was not first published in Japan. Instead it was first published in the US on July 25th. The basis of this claim is in changing the sequences. I told Mr. Jackson that I would have to study whether or not we could make such a registration (i.e., one based on the changes in sequences). I told him I would get back to him.



LIBRARY  
OF  
CONGRESS



REGISTRATION NUMBER	PA	PAU
EFFECTIVE DATE OF REGISTRATION	July	30, 1981
	(Month)	(Day) (Year)

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE CONTINUATION SHEET (FORM PA/CON)

1 Title	TITLE OF THIS WORK: DONKEY KONG	NATURE OF THIS WORK: (See instructions) Audiovisual Work
------------	------------------------------------	---

PREVIOUS OR ALTERNATIVE TITLES:
---------------------------------

**IMPORTANT:** Under the law, the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). If any part of this work was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates blank.

2 Author(s)	1	NAME OF AUTHOR: Nintendo Co., Ltd. Was this author's contribution to the work a "work made for hire"? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	DATES OF BIRTH AND DEATH: Born ..... Died ..... (Year) (Year)
		AUTHOR'S NATIONALITY OR DOMICILE: Citizen of Japan } or { Domiciled in Japan (Name of Country) (Name of Country)	WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK: Anonymous? Yes ..... No <input checked="" type="checkbox"/> Pseudonymous? Yes ..... No <input checked="" type="checkbox"/> If the answer to either of these questions is "Yes," see detailed instructions attached
		AUTHOR OF: (Briefly describe nature of this author's contribution) Entire XXXXXXXXXXXXXXXXXXXXXXXX audiovisual work	
	2	NAME OF AUTHOR: Was this author's contribution to the work a "work made for hire"? Yes ..... No <input type="checkbox"/>	DATES OF BIRTH AND DEATH: Born ..... Died ..... (Year) (Year)
		AUTHOR'S NATIONALITY OR DOMICILE: Citizen of ..... } or { Domiciled in ..... (Name of Country) (Name of Country)	WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK: Anonymous? Yes ..... No ..... Pseudonymous? Yes ..... No ..... If the answer to either of these questions is "Yes," see detailed instructions attached
		AUTHOR OF: (Briefly describe nature of this author's contribution)	
	3	NAME OF AUTHOR: Was this author's contribution to the work a "work made for hire"? Yes ..... No <input type="checkbox"/>	DATES OF BIRTH AND DEATH: Born ..... Died ..... (Year) (Year)
		AUTHOR'S NATIONALITY OR DOMICILE: Citizen of ..... } or { Domiciled in ..... (Name of Country) (Name of Country)	WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK: Anonymous? Yes ..... No ..... Pseudonymous? Yes ..... No ..... If the answer to either of these questions is "Yes," see detailed instructions attached
		AUTHOR OF: (Briefly describe nature of this author's contribution)	

3 Creation and Publication	YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED: Year ..... 1981 (This information must be given in all cases.)	DATE AND NATION OF FIRST PUBLICATION: Date July 9, 1981 (Month) (Day) (Year) Nation Japan (Name of Country) (Complete this block ONLY if this work has been published.)
-------------------------------	---	--

4 Claimant(s)	NAME(S) AND ADDRESS(ES) OF COPYRIGHT CLAIMANT(S): NINTENDO OF AMERICA INC. 18340 Southcenter Parkways Seattle, Washington 98188 U.S.A.
	TRANSFER: (If the copyright claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how claimant(s) obtained ownership of the copyright.) Nintendo Co., Ltd. assigned the entire right title and interest in statutory copyright in the United States and

- |   |  |   |
|---|--|---|
| EXAMINED BY: <u>W/H</u>                                   | APPLICATION RECEIVED<br><u>30 JUL 1981</u>                           | FOR<br>COPYRIGHT<br>OFFICE<br>USE<br>ONLY |
| CHECKED BY: .....   | DEPOSIT RECEIVED<br><u>30 JUL 1981</u> **<br><u>30 JUL 1981</u>      |   |
| CORRESPONDENCE<br><input checked="" type="checkbox"/> Yes | DEPOSIT ACCOUNT<br>FUNDS USED<br><input checked="" type="checkbox"/> |   |
|   | REMITTANCE NUMBER AND DATE   |   |

• Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office? Yes . . . . . No **X** . . . . .

• If your answer is "Yes," why is another registration being sought? (Check appropriate box)

☐ This is the first published edition of a work previously registered in unpublished form.

☐ This is the first application submitted by this author or as copyright claimant.

☐ This is a changed version of the work, as shown by line 6 of the application.


• If your answer is "Yes," give: Previous Registration Number . . . . . Year of Registration . . . . .

5

⑥

7



Handwritten signature: (X)   
Typed or printed name: John K. Donaghy Date: 7/29/81

8

**Certificate**  
(Application must be signed)

Washington, D. C. 20006

(Certificate will  
be mailed in  
window envelope)

⑨

Address  
For Rate  
of  
Certificate

• 17 USC 506(a)(2) FALSE REPRESENTATION - Any person who knowingly makes a false representation of a material fact on the application for copyright registration provided for by section 509 or on any written notice provided in connection with the application, shall be fined not more than \$2,500.

U.S. GOVERNMENT PRINTING OFFICE: 1979-281-472-110

July 1979-12

# CONTINUATION SHEET FOR FORM PA

- If at all possible, try to fit the information called for into the spaces provided on Form PA.
- If you do not have space enough for all of the information you need to give on Form PA, use this continuation sheet and submit it with Form PA.
- If you submit this continuation sheet, leave it attached to Form PA. Or, if it becomes detached, clip (do not tape or staple) and fold the two together before submitting them.
- PART A of this sheet is intended to identify the basic application. PART B is a continuation of Space 2. PART C is for the continuation of Spaces 1, 4, or 6. The other spaces on Form PA call for specific items of information, and should not need continuation.

FORM PA/C  
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

PA

PAU

EFFECTIVE DATE OF REGISTRATION

July 30, 1981  
(Month) (Day) (Year)

CONTINUATION SHEET RECEIVED

30 JUL 1981

Page 3 of 3 pages

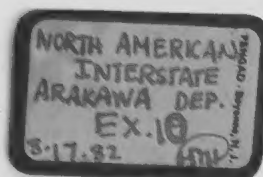
DO NOT WRITE ABOVE THIS LINE. FOR COPYRIGHT OFFICE USE ONLY

<p><b>(A)</b> Identification of Application</p>	<p><b>IDENTIFICATION OF CONTINUATION SHEET:</b> This sheet is a continuation of the application for copyright registration on Form PA, submit the following work:</p> <ul style="list-style-type: none"> <li>• <b>TITLE:</b> (Give the title as given under the heading "Title of this Work" in Space 1 of Form PA.) <b>DONKEY KONG</b></li> <li>• <b>NAME(S) AND ADDRESS(ES) OF COPYRIGHT CLAIMANT(S):</b> (Give the name and address of at least one copyright claimant as given in Space 4 of Form PA.) <b>Nintendo Of America Inc. Seattle, Washington</b></li> </ul>		
<p><b>(B)</b> Continuation of Space 2</p>	<p><b>NAME OF AUTHOR:</b></p> <p>Was this author's contribution to the work a "work made for hire"? Yes..... No.....</p> <p><b>AUTHOR'S NATIONALITY OR DOMICILE:</b></p> <p>Citizen of ..... } or { Domiciled in ..... (Name of Country) (Name of Country)</p> <p><b>AUTHOR OF:</b> (Briefly describe nature of this author's contribution)</p>	<p><b>DATES OF BIRTH AND D</b></p> <p>Born..... Died..... (Year) (Year)</p> <p><b>WAS THIS AUTHOR'S CONTRIBUTION THE WORK:</b></p> <p>Anonymous? Yes..... No..... Pseudonymous? Yes..... No.....</p> <p>If the answer to either of these question "Yes," see detailed instructions attached</p>	
<p><input type="checkbox"/></p>	<p><b>NAME OF AUTHOR:</b></p> <p>Was this author's contribution to the work a "work made for hire"? Yes..... No.....</p> <p><b>AUTHOR'S NATIONALITY OR DOMICILE:</b></p> <p>Citizen of ..... } or { Domiciled in ..... (Name of Country) (Name of Country)</p> <p><b>AUTHOR OF:</b> (Briefly describe nature of this author's contribution)</p>	<p><b>DATES OF BIRTH AND D</b></p> <p>Born..... Died..... (Year) (Year)</p> <p><b>WAS THIS AUTHOR'S CONTRIBUTION THE WORK:</b></p> <p>Anonymous? Yes..... No..... Pseudonymous? Yes..... No.....</p> <p>If the answer to either of these question "Yes," see detailed instructions attached</p>	
<p><input type="checkbox"/></p>	<p><b>NAME OF AUTHOR:</b></p> <p>Was this author's contribution to the work a "work made for hire"? Yes..... No.....</p> <p><b>AUTHOR'S NATIONALITY OR DOMICILE:</b></p> <p>Citizen of ..... } or { Domiciled in ..... (Name of Country) (Name of Country)</p> <p><b>AUTHOR OF:</b> (Briefly describe nature of this author's contribution)</p>	<p><b>DATES OF BIRTH AND D</b></p> <p>Born..... Died..... (Year) (Year)</p> <p><b>WAS THIS AUTHOR'S CONTRIBUTION THE WORK:</b></p> <p>Anonymous? Yes..... No..... Pseudonymous? Yes..... No.....</p> <p>If the answer to either of these question "Yes," see detailed instructions attached</p>	
<p><b>(C)</b> Continuation of Other Spaces</p>	<p><b>CONTINUATION OF (Check which):</b> <input type="checkbox"/> Space 1 <input type="checkbox"/> Space 4 <input type="checkbox"/> Space 6</p> <p>in the Western Hemisphere in and to a certain amusement game know as <b>DONKEY KONG</b> in an <b>ASSIGNMENT</b> dated <b>July 27, 1981.</b></p>		



# WANTED:

## LOCATIONS OF CRAZY KONG VIDEO GAMES



Federal District Courts in Los Angeles, California and Orlando, Florida have entered preliminary injunctions against manufacturers and assemblers of CRAZY KONG video games for infringing Nintendo's rights in the DONKEY KONG video game. These defendants claimed to have authority from Falcon Company of Japan through a "license" with Nintendo to copy the DONKEY KONG game

or printed circuit boards and to manufacture and distribute such games as CRAZY KONG in the United States and Canada. No such authority exists and the defendants' claim was rejected. A lawsuit for damages and attorneys' fees remains. Follow-up lawsuits against distributors and operators in possession of CRAZY KONGS are pending.

## DISTRIBUTORS AND OPERATORS— BEWARE!

Deal only with legitimate DONKEY KONG games. Be alert to non-genuine audio-visual games. Infringing games and their components may be confiscated and destroyed when traced into the hands of even innocent buyers.

### Nintendo

Nintendo of America Inc.  
18340 Southcenter Parkway, Seattle, Washington 98188.  
Tel. (206) 875-8101



# Nintendo joins Legal Battle against Video Game Infringements

Nintendo will pursue all infringements of its audio-video games (listed below) under copyright, trademark and unfair competition laws in Federal and State Courts, and before the United States Customs Service and International Trade Commission.

**DONKEY KONG • RADAR SCOPE • SKY SKIPPER**  
...and others.

## INFRINGERS:

In addition to civil remedies available to Nintendo, criminal charges will be sought against willful infringers and their prosecution will be actively assisted.

## DISTRIBUTORS AND OPERATORS:

Be alert to non-genuine audio-video games. Infringing games and their components may be confiscated and destroyed when traced into the hands of even innocent buyers.

# Nintendo

NINTENDO OF AMERICA INC.  
18340 Southcenter Parkway, Seattle, Washington 98188  
Tel: (206) 575-8191